

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2010-0323-02E</b>
For use by Office of Administrative Law (OAL) only		2010 MAR 23 PM 3:02 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Corporations			AGENCY FILE NUMBER (if any) PRO 16/08

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S) 10	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Karen Fong		TELEPHONE NUMBER (916) 322-3553
FAX NUMBER (Optional) (916) 322-5875		NOTICE REGISTER NUMBER		PUBLICATION DATE
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) SAFE Mortgage Licensing Act		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 1409.1, 1414, 1422.4, 1422.4.1, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, see attached sheet.	
		AMEND 1404, 1409, 1411, 1430.5, 1431, 1433, 1436, 1454, 1550, 1552, 1557, 1950.003, see attached sheet.	
TITLE(S) 10		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) <b>ASAP but no later than 3/31/10</b>			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <i>see attached sheet.</i>			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Karen Fong or Tanya Bosch		TELEPHONE NUMBER (916) 322-3553	FAX NUMBER (Optional) (916) 322-5875
		E-MAIL ADDRESS (Optional) kfong@corp.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE  
*Colleen E. Monahan*  
TYPED NAME AND TITLE OF SIGNATORY  
Colleen E. Monahan, Deputy Commissioner

DATE  
3/23/10

For use by Office of Administrative Law (OAL) only

NOTICE OF PUBLICATION/REGULATIONS SUBMISSION  
STD 400

Department of Corporations  
File Number: PRO 16/08  
SAFE Mortgage Licensing Act

B.2. Continuation sheet for Sections Adopt and Amend:

**ADOPT:** 1422.7, 1422.7.1, 1422.9, 1422.10, 1422.11, 1422.12, 1424, 1437, 1950.122.2.1, 1950.122.4, 1950.122.4.1, 1950.122.5, 1950.122.5.1, 1950.122.5.2, 1950.122.5.3, 1950.122.5.4, 1950.122.6, 1950.122.7, 1950.122.8, 1950.122.9, 1950.122.10, 1950.122.11, 1950.122.12, 1950.205.1, 1950.209, and 1950.307

**AMEND:** 1950.122, 1950.122.2, 1950.123, 1950.204.3, 1950.204.4, 1950.301, 1950.314.8, 1950.316, and 1950.317

B.5. Continuation sheet for requesting an earlier effective date.

Pursuant to Government Code Section 11343.4(c), the Department of Corporations (Department) respectfully requests that the Office of Administrative Law cause the effective date as soon as possible, but no later than March 31, 2010. The Department has determined that there exists good cause for an earlier effective date, namely because all mortgage loan originators subject to the Department's jurisdiction are required to be licensed no later than July 31, 2010. This is a new requirement and implementation should be done as quickly as possible so as to avoid (1) unlicensed mortgage loan originating activities, and (2) mortgage loan originators who desire to become licensed from not becoming licensed in a timely manner. Indeed, the Department is concerned that if the emergency rules are not implemented as soon as possible, many mortgage loan originators and their employer mortgage lenders subject to the Department's jurisdiction will be prohibited from providing loans to potential homeowners. Such a stop in the flow of loans will exacerbate the already fragile housing market and economy. Every effort should be made to prevent the further downward spiraling of the California housing economy. Moreover, the Department is imposing a moratorium on mortgage loan originator license fees until March 31, 2010. As of April 1, 2010, the Department, through the electronic web-based Nationwide Mortgage Licensing System and Registry System, will begin to charge mortgage loan originator license applicants the \$100 fee. Therefore, the Department respectfully requests that the rule become effective as soon as possible, and in any event, no later than March 31, 2010.

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS  
NOTICE OF EMERGENCY ACTION

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations (Commissioner) will file emergency regulations for the adoption and amendment of various sections under Title 10, Chapter 3, of the California Code of Regulations with the Office of Administrative Law (OAL) on March 23, 2010. These emergency regulations implement the federal law, the Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (SAFE Act) and SB 36 (Chapter 160, Statutes of 2009) under the California Finance Lenders Law and the California Residential Mortgage Lending Act. The sections to be adopted include Sections 1409.1, 1414, 1422.4, 1422.4.1, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, 1422.7, 1422.7.1, 1422.9, 1422.10, 1422.11, 1422.12, 1424, 1437, 1950.122.2.1, 1950.122.4, 1950.122.4.1, 1950.122.5, 1950.122.5.1, 1950.122.5.2, 1950.122.5.3, 1950.122.5.4, 1950.122.6, 1950.122.7, 1950.122.8, 1950.122.9, 1950.122.10, 1950.122.11, 1950.122.12, 1950.205.1, 1950.209, and 1950.307; and the sections to be amended include Sections 1404, 1409, 1411, 1430.5, 1431, 1433, 1436, 1454, 1550, 1552, 1557, 1950.003, 1950.122, 1950.122.2, 1950.123, 1950.204.3, 1950.204.4, 1950.301, 1950.314.8, 1950.316, and 1950.317.

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. The Department of Corporations (Department) has complied with Government Code Section 11346.1(a)(2). After submission of the proposed emergency regulations to OAL, OAL will allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6. Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency regulations as set forth in Government Code Section 11349.6. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, the Department will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during the regular rulemaking action.

Attached to this Notice is the specific regulatory language of the Department of Corporations' (Department) proposed emergency action and Finding of Emergency.

You may also review the proposed regulatory language and Finding of Emergency on the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov).

If you have any questions regarding this proposed emergency action please contact Gayle Oshima, Senior Corporations Counsel, Office of Legislation and Policy, at (916) 322-3553. The backup contact person is Sherri Kaufman at (916) 324-6965. Comments may also be sent by electronic mail at [regulations@corp.ca.gov](mailto:regulations@corp.ca.gov) or faxed to (916) 322-5875.

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS

TEXT OF PROPOSED CHANGES UNDER THE  
CALIFORNIA FINANCE LENDERS LAW  
CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT  
EFFECTIVE:

1. Section 1404 is amended to read:

§ 1404. Definitions.

The following terms used in these rules shall have (unless the context otherwise indicates) the following meanings:

(a) "Call report" or "NMLS Mortgage Call Report" means a report of condition on the company and its operations including financial statements and production activity volumes, as required by NMLS.

~~(a)~~ (b) "Company" includes all domestic and foreign private corporations, limited liability companies, joint ventures, associations, syndicates, joint stock companies, partnerships of every kind, unincorporated organizations, government or political subdivisions of a government, trustees and individuals.

(c) "Department" means the Department of Corporations of the State of California.

~~(b)~~ (d) "Finance company" means a company subject to the California Finance Lenders Law and also has the same meaning as "licensee" as defined in Financial Code Section 22007.

~~(c)~~ (e) "Law" or "Code" means the California Finance Lenders Law.

~~(d) "Department" means the Department of Corporations of the State of California.~~

(f) "Mortgage lender" or "mortgage broker" or "mortgage lender and broker" means a finance company, finance lender, or broker who makes, brokers, or services

residential mortgage loans and who is required to be licensed pursuant to Section 22100 of the Code.

(g) "Form MU1" means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for a mortgage lender, mortgage servicer, or mortgage broker business, entitled "Uniform Mortgage Lender/Mortgage Broker Form."

(h) "Form MU2" means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for a person that directly or indirectly exercises control over a mortgage lender, mortgage servicer, or mortgage broker business, or a branch thereof, including the individuals specified in item 2 of Schedule A of the form, entitled "Uniform Mortgage Biographical Statement & Consent Form."

(i) "Form MU3" means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for the branch office of a mortgage lender, mortgage servicer, or mortgage broker, entitled "Uniform Mortgage Branch Office Form."

(j) "Form MU4" means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for an individual mortgage license or registration, entitled "Uniform Individual Mortgage License/Registration & Consent Form."

(k) "NMLS" means the Nationwide Mortgage Licensing System and Registry.

(l) "Sponsoring" or "to sponsor" means to maintain an employment relationship between a mortgage loan originator and a mortgage lender, mortgage broker, or mortgage lender and broker where the mortgage loan origination activities of the mortgage loan originator are subject to the supervision and oversight of the mortgage lender, mortgage broker, or mortgage lender and broker. A licensed mortgage lender, mortgage broker, or mortgage lender and broker is the "sponsor" of a mortgage loan

originator employed by, and subject to the supervision and oversight of, the mortgage lender, mortgage broker, or mortgage lender and broker. For purposes of these rules, an employment relationship may be established through factors such as supervision and control of the sponsored mortgage loan originator, legal and regulatory responsibility for the acts of the mortgage loan originator, and performance under the name, authority and policies of the sponsor, and is not necessarily contingent on whether a mortgage loan originator is issued a Form W-2 by the sponsor.

Note: Authority cited: Sections 22012, 22100, and 22150, Financial Code.

Reference: Sections 22000 et seq., Financial Code.

2. Section 1409 is amended to read:

§ 1409. Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required.

(a) A finance company shall at all times maintain on file with the Commissioner a current list of officers, directors, and partners in the case of a partnership, and other persons named in the application. Changes in partnerships are limited to the conditions set forth in Section 22151(b) of the Law. In the event of any change, other than transfers between branch offices, in the officers, directors, or partners, or other persons named in the application, a finance company shall file with the Commissioner an amendment to the application containing the same information in relation to such new person(s) as is required in the application, within thirty days from the date of the change.

(b) A mortgage lender, mortgage broker, or mortgage lender and broker shall comply with subsection (a) by submitting changes to the Commissioner through NMLS on Forms MU1, MU2, MU3, and MU4, as applicable.

(c) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 22100, 22101, and 22150, Financial Code.

Reference: Sections 22100, 22101, 22108, 22109, 22109.6, 22150 and 22151, Financial Code.

3. Section 1409.1 is adopted to read:

§ 1409.1. Notice of Changes by Mortgage Lender, Mortgage Broker, Mortgage Lender and Broker, and Mortgage Loan Originator.

(a) Each licensed mortgage lender, mortgage broker, mortgage lender and broker, and mortgage loan originator shall, upon any change in the information contained in its license application (other than financial information contained therein) promptly file an amendment to such application setting forth the changed information.

(b) A mortgage lender, mortgage broker, and mortgage lender and broker shall file changed information contained in its Forms MU1, MU2, and MU3, and any exhibits thereto, through NMLS in accordance with its procedures for transmission to the Commissioner. Any change that cannot be submitted through NMLS shall be filed directly with the Commissioner.

(c) A mortgage loan originator shall file changed information contained in its Form MU4, and any exhibits thereto, through NMLS in accordance with its procedures for transmission to the Commissioner within twenty (20) days of changes to the information as provided in Section 1422.6 of these rules. Any change that cannot be submitted through NMLS shall be filed directly with the Commissioner. A mortgage loan originator may not renew his or her license under Section 1422.6.3 of these rules until

all changes to the information contained in his or her Form MU4 are filed with the Commissioner as provided in this section.

(d) A licensed mortgage lender, mortgage broker, and mortgage lender and broker shall notify the Commissioner of the employment of any new mortgage loan originator in California and of the termination of employment of any mortgage loan originator in California in accordance with Section 1422.6 of these rules.

(e) If a mortgage lender, mortgage broker, or mortgage lender and broker discovers that its mortgage loan originator has not filed an amendment to his or her Form MU4 as required by subsection (c), the mortgage lender, mortgage broker, or mortgage lender and broker shall require the mortgage loan originator to file the amendment immediately. If, within five (5) days from the demand, the mortgage loan originator has not made the changes, the mortgage lender, mortgage broker, or mortgage lender and broker shall inform the Commissioner in writing.

(f) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 22100 and 22108, Financial Code. Reference: Section 1798.18, Civil Code; and Sections 22106 and 22108, Financial Code.

4. Section 1411 is amended to read:

§ 1411. Criminal Actions: Report to Commissioner.

(a) A finance company shall immediately report in writing to the Commissioner any criminal action filed against such company or its directors, officers or management personnel.

(b) A mortgage lender, mortgage broker, mortgage lender and broker, and mortgage loan originator shall file the information in subsection (a) with the NMLS on

Form MU1 and MU2, as applicable, in accordance with its procedures for transmission to the Commissioner.

(c) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22108, 22109, 22109.1, 22701, 22705 and 22714, Financial Code.

5. Section 1414 is adopted to read:

§ 1414. Supervision of Mortgage Loan Originators.

(a) Every mortgage lender, mortgage broker, and mortgage lender and broker shall exercise diligent supervision over the mortgage loan origination and lending activities of every mortgage loan originator that it sponsors.

(b) Every mortgage loan originator employed by a mortgage lender, mortgage broker, or mortgage lender and broker shall be subject to the supervision of a branch manager designated by such mortgage lender, mortgage broker, or mortgage lender and broker. Every branch manager shall be identified on Form MU3 and shall submit a Form MU2 to NMLS.

(c) Every mortgage lender, mortgage broker, and mortgage lender and broker shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, that set forth the procedures adopted by the mortgage lender, mortgage broker, and mortgage lender and broker to comply with the duties imposed by this section.

(d) Every mortgage lender, mortgage broker, and mortgage lender and broker shall designate a Supervisor, an individual who shall:

(1) Supervise and periodically review the activities of the branch managers designated pursuant to subsection (b) of this section;

(2) Periodically inspect each business office of the mortgage lender, mortgage broker, or mortgage lender and broker to ensure that the written procedures are enforced; and

(3) In the event a mortgage lender, mortgage broker, or mortgage lender and broker does not have any branch offices, the Supervisor shall directly supervise and review the activities of the mortgage loan originators

(e) The Supervisor shall be identified in Form MU1 as a qualifying individual and shall submit a Form MU2. For purposes of these rules, a qualifying individual is a person in charge and responsible for the actions of the mortgage lender, mortgage broker, and mortgage lender and broker.

(f) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 22100 and 22109.1, Financial Code. Reference: Section 22013, Financial Code.

6. Section 1422.4 is adopted to read:

§ 1422.4. Electronic Filings.

(a) DESIGNATION: The Commissioner designates the Nationwide Mortgage Licensing System (NMLS) owned and operated by the State Regulatory Registry LLC (SRR), a wholly-owned subsidiary of the Conference of State Bank Supervisors (in cooperation with the American Association of Residential Mortgage Regulators) to receive and store filings, obtain fingerprints, obtain credit reports, and collect related

fees from applicants and state-licensed mortgage lenders, mortgage brokers, mortgage lenders and brokers, and mortgage loan originators on behalf of the Commissioner.

(b) USE OF NMLS: All mortgage lender, mortgage broker, mortgage lender and broker, and mortgage loan originator applications, amendments, reports, notices, related filings, renewals, authorizations, and fees required to be filed with the Commissioner shall be filed electronically with and transmitted to NMLS, except as otherwise indicated in these rules. The following conditions relate to such electronic filings:

(1) Electronic Signature: When a signature or signatures are required by the particular instructions of any filing, including any attestation to be made through NMLS, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate field and submitting the filing to NMLS. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

(2) When filed: Solely for purposes of a filing made through NMLS, unless otherwise specified, a document is considered filed with the Commissioner when all fees are received and the filing is transmitted by NMLS to the Commissioner.

(3) An applicant shall provide through NMLS the necessary authorizations so that NMLS may obtain independent credit reports, fingerprinting and criminal background checks.

(4) Any document required to be filed with the Commissioner that is not permitted to be filed with or cannot be transmitted through NMLS shall be filed in paper directly with the Commissioner.

Note: Authority cited: Sections 22100 and 22150, Financial Code. Reference: Section 1633.7, Civil Code; and Sections 22012, 22014, 22100, 22105.1 and 22105.2, Financial Code.

7. Section 1422.4.1 is adopted to read:

§ 1422.4.1. Share Arrangements with Other Governmental Agencies: Confidentiality.

(a) For purposes of Section 22105.3 of the Financial Code, the Commissioner is authorized to share any information or material that has been submitted to NMLS to any governmental agency, including, but not limited to the Attorney General, the California Department of Justice, the U.S. Department of Justice, the Federal Bureau of Investigation, state or federal regulatory agencies, and county district attorney's offices. The information or material that is shared with a governmental agency shall be accomplished without the loss of privilege or the loss of confidentiality protections provided by law.

(b) A mortgage lender, broker, mortgage lender and broker, and mortgage loan originator applicant may request that certain documents, or parts thereof, be treated confidentially. A request for confidentiality shall be in writing and made pursuant to Section 250.10 of these rules. If a request for confidential treatment is granted or denied, the person making such request will be notified in writing.

Note: Authority cited: Sections 22105.3 and 22150, Financial Code. Reference: Sections 22105.1, 22105.2, 22105.3 and 22105.4, Financial Code.

8. Section 1422.5 is adopted to read:

§ 1422.5. License Application for Mortgage Lenders, Mortgage Brokers, and Mortgage Lenders and Brokers.

The procedures set forth in this section are applicable to a mortgage lender, mortgage broker, and mortgage lender and broker that is required to be licensed under Section 22100 of the Code. A mortgage lender, mortgage broker, and mortgage lender and broker subject to the requirements of this section are not subject to the requirements of Section 1422 of these rules.

(a) INITIAL APPLICATION: The application for a license as a mortgage lender, broker, or mortgage lender and broker under subdivision (a) of Section 22100 of the Code and any amendment to such application under Section 1409.1 of these rules shall be filed upon Form MU1 (Uniform Mortgage Lender/Mortgage Broker Form) and any exhibits, in accordance with the instructions of NMLS for transmission to the Commissioner. Exhibits that cannot be submitted through NMLS shall be submitted directly to the Commissioner as instructed by NMLS. An applicant shall provide the following information, exhibits and documentation in the manner provided:

(1). An applicant shall identify all fictitious business names on Form MU1.

(A) For each fictitious business name, an applicant shall submit directly to the Commissioner a Fictitious Business Name Statement bearing the seal of the county clerk.

(B) An applicant may not use a fictitious business name until the Commissioner approves the use of the name. An applicant may not permit a mortgage loan originator sponsored by the applicant or a branch office to use any name not approved by the Commissioner.

(C) Every applicant and licensee shall comply with the rules governing the filing of a fictitious business name set forth in Business and Professions Code Section 17900 et seq.

(2) For every additional business location, an applicant shall obtain a branch office license in accordance with Section 1424 of these rules.

(3) An applicant shall provide the names, personal history, and experience of individual applicants, officers, directors, managing members (in the case of a limited liability company), general and managing partners (in the case of a partnership), and control persons (both direct and indirect) of the applicant through NMLS on Form MU1 within the "Directors and Executive Officers" section and on the Uniform Mortgage Biographical Statement & Consent Form (Form MU2).

(A) The named individuals shall provide authorization for, and subsequent delivery of, fingerprints to NMLS or the California Department of Justice, or both, as applicable.

(B) An applicant shall pay all fees required for the criminal history background check.

(4) An applicant shall submit through NMLS as an exhibit to Form MU1 financial statements prepared in accordance with generally accepted accounting principles and acceptable to the Commissioner, including applicant's fiscal year end date.

(A) The balance sheet shall be dated no more than 90 days before the date that the application is submitted to the Commissioner through NMLS.

(B) The audited financial statements shall document the required minimum tangible net worth in accordance with Section 22104 of the Code. An applicant who employs one or more mortgage loan originators must meet and maintain a minimum net

worth of \$250,000 at all times, and all other applicants shall maintain a minimum net worth of at least \$25,000 at all times.

(5) An applicant shall submit directly to the Commissioner a Customer Authorization of Disclosure of Financial Records form (Form QR 500.261 (1/00), hereby incorporated by reference), and maintain a copy in the applicant's books and records as provided in Section 22156 of the Code. This authorization is effective as of the date of execution and shall remain effective until five years after the expiration or revocation of the mortgage lender or broker license, including renewals of such license. The authorization may not be revoked.

(6) In addition to the identification of business activities requested on Form MU1, an applicant shall submit a detailed description of the applicant's business activities directly to the Commissioner. If an applicant answers yes to either question (7)(A) or (7)(B) of Form MU1, the applicant must also submit an organizational chart.

(7) An applicant shall submit directly to the Commissioner evidence of surety bond in accordance with Section 1437 of these rules.

(8) If an applicant intends to engage in any activity not specified in Items 4 and 5 of Form MU1, the applicant shall submit this information directly to the Commissioner.

(9) A business entity applicant shall submit the following documents directly to the Commissioner:

(A) A corporate applicant shall submit an original certificate of qualification or good standing from the California Secretary of State executed not more than sixty days before the filing of the application. The certificate must show that the applicant is authorized to transact business in the State of California.

(B) A foreign corporation shall submit an original certificate of qualification or good standing from the Secretary of State of the state of incorporation executed not

more than sixty days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(C) A partnership applicant shall submit its partnership agreement.

(D) A limited partnership or limited liability company applicant shall submit an original certificate of qualification or good standing from the California Secretary of State executed not more than sixty days before the filing of the application, showing that the applicant is authorized to transact business in the State of California.

(E) A foreign limited partnership or limited liability company applicant shall submit an original certificate of qualification or good standing from the Secretary of State of the state of formation executed not more than sixty days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(10) Every applicant shall provide a registered agent for service of process in item 2(A) of Form MU1 that is located within the state of California.

(11) An applicant shall provide its website information through NMLS on Form MU1.

(b) FILING FEE: Pursuant to Section 22103 of the Financial Code, application fees (\$200), investigation fees (\$100) and fingerprint processing fees (\$20 per set to the Department of Corporations, plus Department of Justice and Federal Bureau of Investigation fees, as applicable) related to the fingerprint and criminal background checks, shall be paid through NMLS for transmission to the Commissioner. The payment of some fees may be required to be filed directly with the Commissioner until such time as the NMLS can accept the fee. Fees are not refundable.

(c) COMPLETION OF FILING and ISSUANCE OF LICENSE: An application for licensure as a mortgage lender, mortgage broker, or mortgage lender and broker is not deemed complete until all required fees, all required submissions, and all background

and investigative reports are received by the Commissioner. In accordance with Section 22109(b), the Form MU1 application may be considered withdrawn if the Commissioner does not receive the requested information contained in any written notification of a deficiency within 90 days of the notification.

(d) FILING AN AMENDMENT: In the event of a change to the information in the application, or exhibits thereto, the mortgage lender, mortgage broker, or mortgage lender and broker applicant or licensee shall file an amendment to the Form MU1, MU2, or MU3 through NMLS in accordance with the procedures in Section 1409.1 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within five (5) days. Any change that cannot be reported through NMLS shall be reported directly to the Commissioner.

(e) TRANSITION FOR EXISTING LICENSEES: A mortgage lender, mortgage broker, or mortgage lender and broker that holds a license under the California Finance Lenders Law must file Forms MU1, MU2 and MU3 with NMLS and submit these forms to the Commissioner for approval by July 31, 2010. The Commissioner will not approve the sponsorship of a mortgage loan originator until the Commissioner has approved the transition of the licensee's application onto NMLS.

Note: Authority cited: Sections 22150, Financial Code. Reference: Section 1798.17, Civil Code; Section 7473, Government Code; Sections 22000, 22100, 22101, 22101.5, 22102, 22103, 22104, 22105, 22105.2, 22106, 22107, 22108, 22112, 22153, 22154, 22156, 22157, 22159, 22170, Financial Code; Section 17520, Family Code; and Section 11077.1, Penal Code.

9. Section 1422.6 is adopted to read:

§ 1422.6. Mortgage Loan Originator Application Procedures.

(a) ESTABLISHING A RELATIONSHIP IN NMLS: A licensed mortgage lender, mortgage broker, or mortgage lender and broker shall sponsor in NMLS each mortgage loan originator employed by it. To sponsor a mortgage loan originator, a mortgage lender, mortgage broker, or mortgage lender and broker applicant or licensee must:

(1) Obtain a unique identifier through NMLS.

(2) Obtain for its records, evidence that each mortgage loan originator meets the qualification requirements of Section 1422.6.1 of these rules, and

(3) Ascertain (by investigation) the character, business reputation and experience of any individual mortgage loan originator, prior to executing any transaction on behalf of the mortgage lender, mortgage broker, or mortgage lender and broker. Evidence of compliance with this paragraph shall be maintained as a part of the records of the licensee as required by Sections 1425 and 1426 of these rules.

(b) Upon the employment of an individual as a mortgage loan originator, a mortgage lender, mortgage broker, or mortgage lender and broker shall ensure that the mortgage loan originator files a Uniform Individual Mortgage License/ Registration & Consent Form (Form MU4) in NMLS for submission to the Commissioner and obtains a mortgage loan originator license.

(c) A mortgage lender, mortgage broker, or mortgage lender and broker must establish the sponsorship of the mortgage loan originator in NMLS. A mortgage loan originator sponsorship is not approved until the Commissioner approves the sponsorship and issues the mortgage loan originator a license. A sponsorship will not be approved until the sponsoring mortgage lender, mortgage broker, or mortgage lender and broker has obtained a license through NMLS or has transitioned its license onto NMLS in accordance with Section 1422.5 of these rules.

(d) A mortgage loan originator applicant must complete all license requirements, including, but not limited to the payment of all required fees prior to transmitting the application to the Commissioner. The fee for an application as a mortgage loan originator is one hundred dollars (\$100), which shall be paid through NMLS for transmission to the Commissioner, plus twenty dollars (\$20) for the processing of a criminal history background check. For mortgage loan originator applicants that obtain a unique identifier from NMLS and designate California as his or her state of licensure on or before March 31, 2010, the application fee is waived. The application fee shall constitute the mortgage loan originator's license fee for the remainder of the year in which a license is issued. The fees in this subsection are in addition to any fees required by NMLS, the Department of Justice, the Federal Bureau of Investigation, or any other party for the processing of criminal history background checks, credit reports, testing, education, or any other licensure requirement under the California Finance Lenders Law.

(e) The Form MU4 application may be considered withdrawn if the Commissioner does not receive the requested information contained in the written notification of a deficiency within 90 days of the notification.

(f) In accordance with subdivision (c) of Section 22100, a mortgage lender, mortgage broker, or mortgage lender and broker shall not permit a mortgage loan originator whose license or license sponsorship has lapsed, or whose license sponsorship is not in effect, to engage in activities of a mortgage loan originator unless the mortgage loan originator's license has been reinstated pursuant to the procedures set forth in Section 1422.11 of these rules.

(g) A mortgage lender, mortgage broker, or mortgage lender and broker shall require every sponsored mortgage loan originator to file an amendment to his or her

Form MU4 through NMLS within twenty (20) days of any change to the information contained in the Form MU4.

(h) A mortgage loan originator may not engage in business under any name other than a name approved by the Commissioner for the use by the sponsor of the mortgage loan originator.

(i) A mortgage lender, mortgage broker, or mortgage lender and broker shall be responsible for the acts, practices, and conduct of its sponsored mortgage loan originator in connection with the making, brokering, servicing, or origination of residential mortgage loans until such time that the sponsorship of the mortgage loan originator is terminated through the NMLS. Termination procedures shall be as follows:

(1) A mortgage lender, mortgage broker, or mortgage lender and broker shall terminate the sponsorship of a mortgage loan originator through the NMLS within fifteen (15) days after the termination of an individual, and shall clearly state the reason(s) for termination.

(2) A mortgage loan originator shall file an amendment to Form MU4 to terminate a relationship with a mortgage lender, broker, or mortgage lender and broker within 15 days of the termination. A mortgage loan originator may not originate loans unless he or she has a valid license and the mortgage loan originator has a sponsorship approved by the Commissioner.

(j) PROCEDURES FOR A SOLE PROPRIETOR MORTGAGE LOAN

ORIGINATOR: A sole proprietor mortgage loan originator must:

(1) File Forms MU1 and MU2 (biographical information) and obtain a license as a mortgage lender, mortgage broker, or mortgage lender and broker, and

(2) File Form MU4 and obtain a license as a mortgage loan originator.

Note: Authority cited: Sections 22105.2 and 22150, Financial Code. Reference: Sections 22014, 22100, 22103, 22104, 22105.1, 22108, 22109.6 and 22347, Financial Code.

10. Section 1422.6.1 is adopted to read:

§ 1422.6.1. Qualifications of Mortgage Loan Originator Applicants.

Every applicant for a mortgage loan originator license shall meet the requirements of this section.

(a) QUALIFIED WRITTEN TEST: Every applicant for a mortgage loan originator license shall pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry within one year prior to the date of filing the application for, or the issuance of, a mortgage loan originator license. The qualified written test shall consist of a national component and a California component. An applicant shall abide by the rules, policies and procedures of the Nationwide Mortgage Licensing System and Registry in the administration of the test.

(b) EDUCATION: Every applicant for a residential mortgage loan originator license shall complete at least 20 hours of NMLS approved education including:

(1) Three hours of instruction on federal law and regulations,

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues, and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22109.1, 22109.2 and 22109.3, Financial Code.

11. Section 1422.6.2 is adopted to read:

§ 1422.6.2. Evidence of Financial Responsibility.

(a) The Commissioner's finding required by Section 22109.1(c) of the California Finance Lenders Law relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the role of a mortgage loan originator.

(b) An applicant for a mortgage loan originator license shall authorize NMLS to obtain the applicant's current credit report. The credit report will be used as needed to validate the applicant's responses to the electronic application form, in order to support the Commissioner's finding required by Section 22109.1(c) of the California Finance Lenders Law.

(c) An applicant may be precluded from obtaining a mortgage loan originator license where his or her personal history includes:

(1) Any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or

(2) Other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22109.1, Financial Code.

12. Section 1422.6.3 is adopted to read:

§ 1422.6.3. Continuing Education and Renewal Procedures for Mortgage Loan Originators.

(a) A mortgage loan originator license shall be renewed on an annual basis between November 1 and December 31. A license not renewed during the specified time period shall be deemed a lapsed or expired license. A mortgage loan originator with a lapsed or expired license may not engage in business as a mortgage loan originator until the mortgage loan originator's license is reinstated pursuant to Section 1422.11 of these rules.

(b) To renew a license under subsection (a) of this rule, a licensed mortgage loan originator shall complete at least eight hours of NMLS approved continuing education on or before December 31<sup>st</sup> of every year, which shall consist of the following:

(1) Three hours of instruction on federal law and regulations,

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues, and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22107, 22109.4, 22109.5, and 22172, Financial Code.

13. Section 1422.7 is adopted to read:

§ 1422.7. Notices to be Incorporated into Forms MU1, MU2, MU3, and MU4.

(a) The following notices required by state and federal law are hereby incorporated as part of any uniform form filed through NMLS:

#### NOTICES REQUIRED UNDER STATE AND FEDERAL LAW

#### INFORMATION PRACTICES ACT OF 1977

(California Civil Code Section 1798.17)

(a) The Department of Corporations of the State of California is requesting the information specified in the application for licensure of mortgage lenders, mortgage brokers, mortgage lender and brokers and mortgage loan originators.

(b) The Chief Administrative Officer, 1515 K Street, Suite 200 Sacramento, CA 95814, telephone (916) 445-5541, is responsible for the system of records and shall, upon request, inform individuals regarding the location of the Department of Corporations' records and the categories of persons who use the information in the records.

(c) The records are maintained pursuant to the California Finance Lenders Law (Financial Code Section 22000, et seq.).

(d) The submission of all items of information is mandatory unless otherwise noted. Section 17520 of the Family Code requires the Department of Corporations to collect social security numbers from all applicants. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(e) Failure to provide all or any part of the information requested may preclude the Department of Corporations from approving the application.

(f) The principal purposes within the Department of Corporations for which the information is to be used are to determine whether (1) a license, registration, or other authority, as allowed under the law, should be accepted, granted, approved, denied, revoked or limited in any way; (2) business entities or individuals licensed or otherwise regulated by the Department of Corporations are conducting themselves in accordance with applicable laws; and/or (3) laws administered by the Department of Corporations

are being or have been violated and whether administrative action, civil action, or referral to appropriate federal, state or local law enforcement or regulatory agencies, as authorized by law, is appropriate.

(g) Any known or foreseeable disclosures of the information pursuant to subdivision (e) or (f) of Civil Code Section 1798.24 may include transfers to other federal, state, or local law enforcement or regulatory agencies, as authorized by law.

(h) Except for Section 22105.3 of the Financial Code, the Information Practices Act grants an individual a right of access to personal information concerning the requesting individual that is maintained by the Department of Corporations.

#### FEDERAL PRIVACY ACT OF 1974 (Public Law 93-579)

In accordance with Section 7 of the Privacy Act of 1974 (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)), the following is information on whether the disclosure of a social security account number is voluntary or mandatory, by what statutory or other authority such number is solicited, and what uses will be made of it.

(1) Section 17520 of the Family Code requires the Department of Corporations to collect social security numbers from all applicants. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(2) A social security account number is solicited pursuant to one or more of the following authorities: Sections 1422.5 and 1422.7 of Title 10, California Code of Regulations; and Section 17520 of the Family Code.

(3) For all persons disclosing a social security account number, the number may be used, in addition to other information provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other federal, state or local law enforcement agencies, as authorized by law. The social security number may also be used to respond to requests for this number made by child support agencies.

Note: Authority cited Sections 22150, Financial Code. Reference: Section 1798.17, Civil Code; Sections 22105.1, 22105.2 and 22105.3, Financial Code; Section 17520, Family Code; Sections 7470, 7473, 7490 and 13140-13144, Government Code; and Section 7 of Public Law 93-579 (5 U.S.C. Section 552a note).

14. Section 1422.7.1 is adopted to read:

§ 1422.7.1. Statement of Citizenship, Alienage, and Immigration Status.

Any individual (e.g. sole proprietor or mortgage loan originator) who is applying for any license under the California Finance Lenders Law shall file the Statement of Citizenship, Alienage, and Immigration Status and any accompanying documentation directly with the Commissioner in accordance with Sections 250.60 and 250.61 of these rules.

Note: Authority cited: Sections 22150 and 50304, Financial Code; and Section 1344, Health and Safety Code. Reference: Sections 22101, 50122 and 50130, Financial Code; Section 1351, Health and Safety Code; and 8 U.S.C. Sections 1621, 1641 and 1642.

15. Section 1422.9 is adopted to read:

§ 1422.9. Effectiveness of Mortgage Lender, Mortgage Broker, Mortgage Lender and Broker, and Mortgage Loan Originator Licenses.

(a) A license as a mortgage lender, mortgage broker, or mortgage lender and broker under Section 22100 of the Code continues in effect until it is revoked or suspended by the Commissioner, or surrendered by the mortgage lender, mortgage broker, or mortgage lender and broker and the surrender has been accepted by the Commissioner pursuant to Section 1422.10 of these rules.

(b) A license as a mortgage loan originator under Section 22100 of the Code shall be renewed on an annual basis in accordance with Section 1422.6.3 of these rules.

Note: Authority cited: Sections 22100 and 22150, Financial Code. Reference: Section 22109.6, Financial Code.

16. Section 1422.10 is adopted to read:

§ 1422.10. Surrender of License as a Mortgage Lender, Mortgage Broker or Mortgage Loan Originator.

(a) An application to surrender a license as a mortgage lender, mortgage broker, mortgage lender and broker, or mortgage loan originator shall be filed on Form(s) MU1, MU3, and MU4 through NMLS in accordance with its procedures for transmission to the Commissioner. A licensee shall amend every branch office application Form MU3 and terminate the sponsorship of all mortgage loan originators.

(b) To surrender a branch office license, a licensee shall file an amendment to Form MU3 in accordance with the instructions on the form for surrendering a branch office license.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22107 and 22108, Financial Code.

17. Section 1422.11 is adopted to read:

§ 1422.11. Reinstatement of License as a Mortgage Loan Originator.

(a) A mortgage loan originator license that has not been renewed between November 1 and December 31 is a lapsed or expired license. A mortgage loan originator with an expired license may not continue doing business as a mortgage loan originator unless his or her license is reinstated.

(b) A mortgage loan originator may reinstate an expired license if all of the following conditions are met:

(1) The mortgage loan originator must submit a request for reinstatement through NMLS before March 1 of the year immediately following the year the license expired.

(2) All continuing education courses and any other minimum requirements for the license renewal for the year in which the license expired must be completed before March 1 following the year the license expired.

(3) The mortgage loan originator must pay the applicable licensing, reinstatement, and any late fees or penalties.

(4) The mortgage loan originator must continue to meet minimum standards for renewal in Section 22109.4 of the Code.

(c) If a mortgage loan originator whose license has expired cannot meet the requirements for reinstatement specified in this section or submits a reinstatement filing on or after March 1, the mortgage loan originator must apply for a new license and meet the requirements for licensure in effect at that time.

Note: Authority cited: Sections 22150, Financial Code. Reference: Sections 22107, 22108, 22109, 22109.1, 22109.2, 22109.3, 22109.4 and 22109.5, Financial Code.

18. Section 1422.12 is adopted to read:

§ 1422.12. Challenge Process for Information Entered Into NMLS

(a) If an applicant or licensee disputes the accuracy or completeness of any material information entered into and maintained by NMLS, the applicant or licensee may submit a written request to the Commissioner to the attention of the Special Administrator, California Finance Lenders Law, Department of Corporations, 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, CA 90013-2344. For purposes of this section, a “licensee” includes a mortgage loan originator.

(b) The request shall include the applicant or licensee’s name, unique identifier, a statement of the alleged inaccuracy or incompleteness of the information entered into NMLS, and its materiality, and shall provide any proof or corroboration available, including copies of official documents or court orders that support the changes requested by the licensee or applicant.

(c) Upon receipt of the request, the Commissioner shall investigate the request, along with any information provided, and determine if the information entered into NMLS is correctly reflected.

(d) If the Commissioner determines that the information is materially incorrect, the Commissioner shall request that the NMLS record be corrected.

(e) If the Commissioner denies the allegations of material inaccuracy or incompleteness in the NMLS record, the Commissioner shall notify the licensee or applicant in writing.

(f) Within 30 days from the mailing or service of the notification, the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code) for a determination of whether material inaccuracy or incompleteness exists in the record.

(g) If a material inaccuracy or incompleteness is found in any record, within 30 days of notice of the finding the Commissioner shall request that NMLS correct the information.

(h) Judicial review of the decision shall be governed by Section 11523 of the Government Code.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22105.2, Financial Code.

19. Section 1424 is adopted to read:

§ 1424. Branch Office License Instructions for Mortgage Lenders.

(a) A mortgage lender, broker, or mortgage lender and broker licensee that seeks to engage in business at an additional location must submit an application for a branch office license by submitting Form MU3 (Uniform Mortgage Branch Office Form) in accordance with the instructions of NMLS for transmission to the Commissioner at least ten days (10) before engaging in business at the location.

(b) An applicant that intends to conduct business at the branch office under a fictitious business name not already approved by the Commissioner shall submit a copy of the Fictitious Business Name Statement with the "filed stamp" from the county clerk's office and may not use the name until the Commissioner approves the use of the name.

(c) An applicant shall indicate each branch manager as a branch manager on Form MU3 and submit to NMLS a Form MU2 (Biographical Statement & Consent Uniform Mortgage Lender/Mortgage Broker Form) for each branch manager.

(1) Each branch manager shall provide authorization for, and delivery of, fingerprints and related information to NMLS and the California Department of Justice, as applicable.

(2) Each location must have a branch manager and the same individual may not be a branch manager of multiple locations.

(d) The Commissioner may request additional information, documentation or detail pertaining to the branch office application be filed directly with the Commissioner.

(e) Application, investigation, and criminal history background check fees shall be paid by the applicant or licensee to NMLS for transmission to the Commissioner. Any applicable fees that cannot be paid through NMLS shall be paid directly to the Commissioner. Fees are not refundable.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22101, 22101.5, 22102, 22103 and 22105.1, Financial Code.

20. Section 1430.5 is amended to read:

§ 1430.5. Annual Report and Mortgage Call Report.

(a) The annual report required under Section 22159 of the Financial Code shall be submitted on forms furnished by the Commissioner.

(b) In addition to the annual report required under Section 22159 of the Financial Code, a mortgage lender, mortgage broker, and mortgage lender and broker shall file the NMLS Mortgage Call Report required to be filed pursuant to subdivisions (c) and (d) of Section 22159 of the Code with NMLS for transmission to the Commissioner.

(c) Every mortgage loan originator shall ensure that all residential mortgage loans that close as a result of his or her loan origination activities are included in the NMLS Mortgage Call Report submitted to NMLS or the Commissioner by his or her sponsoring mortgage lender, broker, or mortgage lender and broker.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22159 and 22160, Financial Code.

21. Section 1431 is amended to read:

§ 1431. Special Report.

A special report required by the Commissioner under Financial Code Section 22159(b) shall be signed by the licensee if an individual, by a general partner if a partnership, or by an authorized officer, if a corporation or other business entity.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22159(b).

22. Section 1433 is amended to read:

§ 1433. Forms.

(a) ~~A finance company licensee~~ shall only use a loan form that the company licensee has determined to be in compliance with applicable state and federal law. For purposes of this section, a licensee includes a mortgage loan originator.

(b) All printed matter contained in loan forms used by a ~~finance company licensee~~ shall be in not less than 8-point type, except that printed captions in "boxes" may be 6-point type.

(c) A ~~finance company licensee~~ is prohibited from using a loan form after written notice of objection by the Commissioner to such form has been delivered to such ~~finance company or its representative~~ the licensee.

(d) In accordance with Section 22347 of the Code, the unique identifier of a mortgage loan originator shall be clearly shown on all on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or Internet Web sites documents related to a residential mortgage loan, whether in paper, electronic, or any other format. The unique identifier number shall be so labeled and shall not be smaller than 8-point bold font.

(e) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22150, 22156, 22161, 22163, 22164, 22250, 22347 and 22714, Financial Code.

23. Section 1436 is amended to read:

§ 1436. Nontraditional, Adjustable Rate and Mortgage Loan Products.

(a) Best Practices. Every ~~finance company mortgage lender, mortgage broker, and mortgage lender and broker~~ shall implement best practices to manage loan product risk on a continuous basis. These best practices shall include practices set forth in the Guidance on Nontraditional Mortgage Product Risks published on November 14, 2006 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, which is hereby incorporated by reference, and the Statement on Subprime Mortgage Lending published on July 17, 2007 by the aforementioned entities and the National Association of Consumer Credit Administrators, which is hereby incorporated by reference. Both publications are

collectively referred to herein as the "Guidance" and are available on the Department's web site at [www.corp.ca.gov](http://www.corp.ca.gov). A mortgage loan originator employed by a mortgage lender, mortgage broker, or mortgage lender and broker shall follow the best practices policies and procedures developed by his or her employer. For purposes of this section, "best practices" shall mean lawful processes, policies, and procedures to manage risks associated with use of nontraditional mortgage products and adjustable rate mortgage products as defined and prescribed by the Guidance.

(b) Written Compliance Report. In a separate written document, submitted as an addendum to its annual financial report or report of condition required under Section 22159 of the Financial Code, every ~~finance company~~ mortgage lender, mortgage broker, and mortgage lender and broker shall state whether it made or arranged nontraditional mortgage products and adjustable rate mortgage products, as defined by the Guidance, during the reporting period covered by the annual report. If any such loans were made or arranged, the ~~finance company~~ mortgage lender, mortgage broker, and mortgage lender and broker shall also explain how it has implemented best practices and explain whether and how it has put into effect the following internal controls or procedures during the reporting period: adopted processes, policies and procedures to ensure compliance with the Guidance; designated a compliance officer (including contact information of that officer) to ensure compliance with the Guidance; implemented a consumer complaint process to resolve consumer complaints involving loans covered by the Guidance; and educated employees and agents to help them understand how to apply the best practices. In addition, the ~~finance company~~ mortgage lender, mortgage broker, and mortgage lender and broker shall indicate the number of any consumer complaints it received during the reporting period regarding loans that are subject to the Guidance, including the number of resolved complaints and

unresolved complaints and the number of workout arrangements used for resolved complaints. For purposes of this section, "workout arrangement" shall mean a modified or converted loan product with predictable payment requirements to help the financially-stressed borrower. If any nontraditional mortgage loans or adjustable rate mortgage loans subject to the Guidance were made or arranged, the ~~finance company~~mortgage lender, broker, and mortgage lender and broker shall also submit information regarding those loan products on the form entitled Non-traditional, Adjustable Rate and Mortgage Loan Survey (Rev. 8/07), which is hereby incorporated by reference. This form is available on the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov).

(c) Books and Records. If the ~~finance company~~mortgage lender, mortgage broker, and mortgage lender and broker receives any reportable consumer complaints described in subsection (b), the ~~finance company~~mortgage lender, mortgage broker, and mortgage lender and broker shall maintain for each complaint a copy of the complaint and the ~~finance company's~~mortgage lender, mortgage broker, and mortgage lender and broker's written response or explanation of how the company resolved the complaint including any workout arrangement, shall maintain this documentation as part of its books and records, and shall make the documentation available to the commissioner upon request. In addition, if the ~~finance company~~mortgage lender, mortgage broker, or mortgage lender and broker reports any internal controls or procedures or nontraditional or adjustable rate loans described in subsection (b), the ~~finance company~~mortgage lender, mortgage broker, and mortgage lender and broker shall maintain documentation of those controls or procedures as part of its books and records, and any loan documentation required by law, and shall make the documentation available to the commissioner upon request.

(d) Loan Disclosures. Every ~~finance company~~mortgage lender, mortgage broker, and mortgage lender and broker shall, within three business days after receipt of a completed application for a nontraditional loan or an adjustable rate loan that is subject to the Guidance, or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower statements in writing disclosing, in a clear and conspicuous manner, information comparing payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products offered by the finance company and that are subject to the Guidance. This information shall be provided by one of the following methods:

(1) The form entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction (8/1/07), which is hereby incorporated by reference. This form and its instructions are available on the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov); or

(2) The form of the typical mortgage transaction disclosures set forth in the Comparison of Single Mortgage Features of the Form RE 885 of the Department of Real Estate, as required by Title 10, California Code of Regulations, Section 2842, when provided by a real estate broker on behalf of the ~~finance company~~mortgage lender, mortgage broker, or mortgage lender and broker. This form is available on the Department of Real Estate website at [www.dre.ca.gov](http://www.dre.ca.gov); or

(3) Any other form used by the ~~finance company~~mortgage lender, mortgage broker, and mortgage lender and broker to compare payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products that are subject to the Guidance; provided, however, that the form shall, at a minimum, (A) compare monthly payments and loan balances of these loan products offered by the ~~finance company~~mortgage lender, mortgage broker, or mortgage lender and broker and (B) reflect the borrower's proposed loan amount.

(e) Advertising Prohibitions. For purposes of Section 22161 of the Financial Code, the following are considered false, misleading, or deceptive advertising prohibited by that section for loans that are subject to the Guidance:

(1) Any advertisement of an installment in repayment of an adjustable rate, interest only or payment-option loan without an equally prominent disclosure of the following information about the loan as applicable:

- (A) Principal amount
- (B) Term of loan
- (C) Initial interest rate
- (D) Number of months the initial interest rate will be in effect
- (E) Fully-indexed interest rate
- (F) Maximum interest rate
- (G) If different, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate
- (H) Annual percentage rate
- (I) How often the interest rate and payments can change
- (J) Maximum periodic change in the interest rate and payments (periodic caps)
- (K) Number of months and percentage of original loan amount after which minimum payments will not be accepted and the loan re-amortizes
- (L) The monthly payment based on the maximum interest rate, and the loan balance after all negative amortization is included, assuming minimum payments are made
- (M) If the loan contains a prepayment penalty, a statement to that effect
- (N) If the loan contains a balloon payment, a statement to that effect

(2) Any advertisement that the licensee can arrange "low doc/no doc", "no income/no asset", "stated income", "stated asset", "no ratio" or similar loan products without a statement that these products may have a higher interest rate, more points or more fees than other products requiring documentation.

(f) This section does not apply to a commercial loan. This section applies to loans secured by residential real property located in this State improved by a one-to-four family dwelling.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22150, 22156, 22157, 22159, 22161, 22163, 22164, 22171, 22302, 22502, 22701, 22714, and 22755, Financial Code.

24. Section 1437 is adopted to read:

§ 1437. Surety Bond.

Every finance company shall maintain a surety bond in accordance with Section 22112 of the Financial Code as follows:

(a) A finance company that does not employ one or more mortgage loan originators shall post a surety bond in the amount of \$25,000.

(b) A mortgage lender, mortgage broker, or mortgage lender and broker shall post a surety bond based on the aggregate dollar amount of residential mortgage loans originated by the mortgage lender, mortgage broker, mortgage lender and broker in the preceding year, as follows:

<u>Aggregate Loans</u>	<u>Bond Amount</u>
<u>0 - \$1,000,000</u>	<u>\$25,000</u>
<u>\$1,000,001 - \$50,000,000</u>	<u>\$50,000</u>
<u>\$50,000,001 - \$500,000,000</u>	<u>\$100,000</u>

Over \$500,000,001

\$200,000

(c) The surety bond shall be in the form provided as Exhibit B to the application for a license as a finance lender or broker in Section 1422 of these rules.

(d) A mortgage lender, mortgage broker, or mortgage lender and broker applicant without a prior year operating history shall make a good faith estimate of the aggregate amount of loans anticipated to be originated in the upcoming year to determine the amount of the surety bond.

(e) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 22150, Financial Code. Reference: Section 22112, Financial Code.

25. Section 1454 is amended to read:

§ 1454. Statement of Loan or Documents Used to Comply with Financial Code:  
Form: Contents.

(a) In addition to the specific requirements of Sections 22337, 22338 and 22400(b) of the Financial Code, the statement of loan form shall contain the following and may consist of more than one document:

(1) The name and address of the borrower;

(2) A statement of the actual amount of cash received and retained by the borrower and a statement of any funds (not including any charges within the meaning of Section 22306) paid to third persons pursuant to the written instructions of the borrower;

(3) A statement of any fees, charges, costs, insurance premiums or other sums which have been paid or are to be paid by or on behalf of the borrower at the time the loan is made. On any loan secured in part by real property, in which loan proceeds

were disbursed to an escrow holder, delivery of a copy of the closing statement issued by such escrow holder will be sufficient notification for purposes of subsection (3) of this rule;

(4) A statement that the borrower shall have the right to make payment in advance and in any amount on any contract of loan at any time;

(5) A statement in not less than 12-point bold face capital letters.

FOR INFORMATION CONTACT THE DEPARTMENT OF CORPORATIONS, STATE  
OF CALIFORNIA.

(6) A statement that the loan is made pursuant to the California Finance Lenders Law, Division 9 (commencing with Section 22000) of the Financial Code.

(b) Subsection (a) shall apply to open end loans only to the extent requiring compliance with items (1), (5), and (6) in open end loan agreements.

(c) Any statement of loan form used by a mortgage lender, mortgage broker, mortgage lender and broker, or mortgage loan originator shall indicate the unique identifier of the mortgage lender, mortgage broker, mortgage lender and broker, or mortgage loan originator.

(d) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22150, 22156, 22158, 22306, 22337, 22338 and 22400, Financial Code.

26. Section 1550 is amended to read:

§ 1550. Advertising: Submission for Examination.

(a) A ~~finance company~~licensee, and every applicant for a license, shall submit in duplicate to the Commissioner for examination all advertising used or proposed to be used in the conduct of its business under the Law. For purposes of this section, an applicant and licensee shall include a mortgage loan originator.

(b) A ~~finance company~~ licensee, and applicant for a license, shall not use any advertising until it has been ~~so~~ submitted to the Commissioner for examination and the Commissioner has notified said ~~company~~ the licensee, or applicant for a license in writing that the use of said the advertising is not disapproved.

(1) In the case of a mortgage loan originator, if the mortgage loan originator will use an advertisement supplied by his or her sponsor, and the Commissioner had notified the mortgage lender, mortgage broker, mortgage lender and broker in writing that the use of the advertising is not disapproved, the mortgage loan originator is not required to resubmit the advertisement. However, if any changes are made to the advertisement, it shall be resubmitted and may not be used by the mortgage loan originator until the Commissioner has notified him or her that the advertising is not disapproved.

(c) The Commissioner may, by order, exempt from the provisions of this section, any licensee that the Commissioner has found to have been in substantial compliance with the provisions of the Law and these regulations regarding advertising for a period of not less than 12 months immediately prior to the effective date of such order. Any such order shall continue in effect until it expires by its terms or until the Commissioner revokes it for lack of compliance with such provisions subsequent to the effective date thereof.

(d) Any advertisement proposed to be used by a licensed mortgage lender, mortgage broker, mortgage lender and broker, or mortgage loan originator shall indicate

the unique identifier of the mortgage lender, mortgage broker, mortgage lender and broker, or mortgage loan originator.

(e) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22014, 22150, 22161, 22163, 22164, 22165, 22347 and 22755, Financial Code.

27. Section 1552 is amended to read:

§ 1552. Maintenance of Advertising Copy.

(a) A ~~finance company~~ licensee shall maintain in its home office, a file of all advertising copy for a period of at least ninety (90) days after the last date of its use.

(b) All advertising copy shall have noted thereon the name or names of all advertising media used and the dates when such advertising appeared.

(c) In the case of radio or television advertising, unless the full text of such announcements is retained for the aforesaid prescribed time by the broadcasting station or stations and is available to the commissioner, licensee shall cause a voice transcription of the full text of such announcements to be prepared and retained for said ninety (90) day period.

(d) Any advertising used by a mortgage loan originator shall be maintained by the sponsoring mortgage lender, mortgage broker, or mortgage lender and broker, in the manner set forth in this section.

(e) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 22150, Financial Code. Reference: Sections 22014 and 22166, Financial Code.

28. Section 1557 is amended to read:

§ 1557. "Blind" Advertising Prohibited.

A finance company licensee shall not use so-called "blind" advertisements. For purposes of this section, an Example of "blind" advertising is that giving occurs when the advertisement provides only a telephone number, post office or newspaper box numbers, or name other than that of the finance company licensee. For purposes of this section, a licensee includes a mortgage loan originator. The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 22150, Financial Code. Reference: Sections 22014, 22150, 22161, 22163, 22164, 22165, and 22755, Financial Code.

29. Section 1950.003 is amended to read:

§ 1950.003. Definitions.

(a) "Code" means the California Financial Code.

(b) "Department" means the Department of Corporations.

(c) "Call report" or "NMLS Mortgage Call Report" means a report of condition on a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer and its operations including financial statements and production activity volumes, as required by NMLS.

(d) "Form MU1" means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for a mortgage lender, mortgage servicer, or mortgage broker business, entitled "Uniform Mortgage Lender/Mortgage Broker Form."

(e) "Form MU2" means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for a person that directly or indirectly

exercises control over a mortgage lender, mortgage servicer, or mortgage broker business, or a branch thereof, including the individuals specified in item 2 of Schedule A of the form, entitled “Uniform Mortgage Biographical Statement & Consent Form.”

(f) “Form MU3” means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for the branch office of a mortgage lender, mortgage servicer, or mortgage broker, entitled “Uniform Mortgage Branch Office Form.”

(g) “Form MU4” means the uniform licensing form developed by the Nationwide Mortgage Licensing System and Registry for an individual mortgage license or registration, entitled “Uniform Individual Mortgage License/Registration & Consent Form.”

(h) “NMLS” means the Nationwide Mortgage Licensing System and Registry..

(i) “Sponsoring” or “to sponsor” means to maintain an employment relationship between a mortgage loan originator and a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer where the mortgage loan origination activities of the mortgage loan originator are subject to the supervision and oversight of the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer. A licensed residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer is the “sponsor” of a mortgage loan originator employed by, and subject to the supervision and oversight of, the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer. For purposes of these rules, an employment relationship may be established through factors such as supervision and control of the sponsored mortgage loan originator, legal and regulatory responsibility for the acts of the mortgage loan originator, and performance under the

name, authority and policies of the sponsor, and is not necessarily contingent on whether a mortgage loan originator is issued a Form W-2 by the sponsor.

Note: Authority cited: Section 50304, Financial Code. Reference: Sections 50002.5 and 50003, Financial Code.

30. Section 1950.122 is amended to read:

~~§ 1950.122. Application for a License under the California Residential Mortgage Lending Act.~~

~~The application for licensure under the California Residential Mortgage Lending Act shall be made in the following form:~~

~~(Department of Corporations Use Only)~~

~~DEPARTMENT OF CORPORATIONS~~

~~Fee Paid \$ \_\_\_\_\_~~

~~File No. \_\_\_\_\_~~

~~Receipt No. \_\_\_\_\_~~

~~STATE OF CALIFORNIA~~

~~DEPARTMENT OF CORPORATIONS~~

**~~FACING PAGE  
FOR~~**

**~~APPLICATION FOR A LICENSE UNDER THE~~**

**~~CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT~~**

**~~APPLICATION FOR A LICENSE AS A: [ ] LENDER [ ] LENDER & SERVICER [ ] SERVICER~~**

**~~PRE-LICENSE AMENDMENT NO. \_\_\_\_\_ POST-LICENSE AMENDMENT NO. \_\_\_\_\_~~**

The application ~~must be TYPEWRITTEN and accompanied~~ by an application fee of \$900, a nonrefundable investigation fee of \$100, and fingerprint processing fees (Departments of Corporations and Justice). [Financial Code Sections 50121(c) and 50130(b)(2).] The application (together with the fees payable to the Commissioner of Corporations) must be filed only in the Los Angeles office of the Department of Corporations, located at 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, California 90013-1105. [Financial Code Section 50122 and 50130.]

Special Instructions: Any amendment to this application for licensure under the California Residential Mortgage Lending Act shall be made by a verified pre-license or post-license amendment to the application. A pre-license amendment is required for an amendment to the application prior to licensure; a post-license amendment is required subsequent to licensure. An amendment is made by filing the completed "Facing Page" with the appropriate pre-license or post-license amendment number entered, attaching the pages of that part of the application (including the exhibits) that are revised or changed, and attaching another duly executed and verified "Execution Page". (The Execution Page is found at the end of this application.)

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1. Name of applicant: \_\_\_\_\_

Fictitious Business Name: \_\_\_\_\_

**[The application continues on the following, separate pages.]**

2. ~~List the place or places of business at which Applicant will engage in licensed activity.~~

~~Indicate principal place of business and branch or other office locations: (Attach a separate sheet, if necessary.)~~

~~\_\_\_\_\_~~

~~(Number and Street) (City) (County) (State) (Zip)~~

~~\_\_\_\_\_~~

~~("dba" or fictitious business name) (Name of person in charge of business location)~~

3. ~~Applicant is organized and will do business as (check as applicable):~~

~~☐ an individual or sole proprietorship~~

~~☐ a corporation~~

~~☐ a partnership~~

~~☐ other (please specify) \_\_\_\_\_~~

4. ~~The following **must be completed** if the applicant is an:~~

~~☐ Individual or Sole Proprietorship~~

~~☐ General Partnership~~

~~☐ Limited Partnership~~

~~If a general or limited partnership, applicant was organized on \_\_\_\_\_ in the  
State of \_\_\_\_\_ (Date)~~

The **FULL** first, middle (if no middle name, so indicate) and last name, and complete business address **MUST** be given for each individual or general partner. [Also indicate if a general partner is the managing general partner.] [Financial Code Sections 50122(b) and 50130(b)(1).]

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(Name)	(Business Address)
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(Name)	(Business Address)
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(Name)	(Business Address)
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5. The following **must be completed** if the applicant is a:

☐ Corporation ☐ Limited Liability Company

☐ Trust ☐ Other: \_\_\_\_\_

Applicant was organized on: \_\_\_\_\_ in the State of \_\_\_\_\_.

(Date)

The **FULL** first, middle (if no middle name, so indicate) and last name, and complete business address **MUST** be given for each person named below: (Attach additional sheets, if necessary.) [Financial Code Sections 50121(d), 50122(b) and 50130(b)(1).]

**~~President/Chief Executive Officer:~~**

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(Name)	(Business Address)
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**~~Executive Vice President/Vice President:~~**

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(Name)	(Business Address)
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(Name)	(Business Address)
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**~~Secretary:~~**

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(Name)	(Business Address)
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**~~Treasurer/Chief Financial Officer:~~**

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(Name)	(Business Address)
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**Principal Officers** (See Financial Code Section 50128 for definition):

(Name)	(Business Address)
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**Director(s):**

(Name)	(Business Address)
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(Name)	(Business Address)
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(Name)	(Business Address)
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**~~Manager(s)/Member(s)~~** [i.e., a manager member of an association, or a manager appointed or elected by the members of a limited liability company]:

<del>(Name)</del>	<del>(Business Address)</del>
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<del>(Name)</del>	<del>(Business Address)</del>
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<del>(Name)</del>	<del>(Business Address)</del>
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**~~Trustee(s):~~**

<del>(Name)</del>	<del>(Business Address)</del>
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<del>(Name)</del>	<del>(Business Address)</del>
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<del>(Name)</del>	<del>(Business Address)</del>
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~~Any person (other than those persons listed above) that owns or controls, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the applicant. (See Financial Code Section 50003(e)):~~

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(Name)	(Business Address)
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(Name)	(Business Address)
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(Name)	(Business Address)
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6. ~~Please furnish the File Number(s) of any other Department of Corporations' license(s) currently held by applicant:~~ \_\_\_\_\_

7. ~~Please furnish the name of the law, the license number(s), and the name and address of the state regulator under which mortgage lending or mortgage servicing activities are conducted by the applicant in this state and in other states. (Attach additional sheets, if necessary.)~~

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8. ~~The applicant's fiscal year end is:~~ \_\_\_\_\_

Note: If you ~~DO NOT~~ designate a fiscal year end, the Department will record your fiscal year end as December 31.

9. ~~The following items **MUST BE** provided as Exhibits to the application:~~

~~**EXHIBIT A.** A statement of financial solvency supported by an audited financial statement with an unqualified opinion prepared by an independent certified public accountant in accordance with generally accepted accounting principles and reflecting the required minimum tangible net worth of \$250,000. [Financial Code Sections 50122(b)(1), 50130(b)(1) and 50201.]~~

~~**EXHIBIT B.** A copy of the surety bond, including any and all riders and endorsements, shall be filed with the Commissioner of Corporations for review and approval prior to execution. A certified copy of the bond and any riders shall be filed with the Commissioner of Corporations within 10 days of its execution. [Financial Code Section 50205.] A copy of the fidelity bond currently in effect. [Financial Code Section 50122(b)(6).]~~

~~**EXHIBIT C.** A copy of the evidence of federal agency approval for the applicant to engage in business as a lender and/or servicer of federally regulated mortgage loans. [Financial Code Sections 50003(l) and (p).]~~

~~**EXHIBIT D.** For each person named in Items 4 and 5 of this application, please furnish the following: [Financial Code Sections 50121(d), 50130(b)(1), 50130(f), and 50317(a).]~~

~~1. A Statement of Identity and Questionnaire\*,~~

~~2. Fingerprint information pursuant to California Penal Code Section 11077.1\*, and~~

~~3. Notice of Officers, Directors, Partners, "Control" Persons, Managers, Members, Trustees and Employees of a Residential Mortgage Lender, Residential Mortgage Lender and Servicer, or Residential Mortgage Loan Servicer\*. (See, Rule 1950.122.2).~~

~~The Commissioner of Corporations may, in his or her discretion, waive the requirement of fingerprints for some or all of the persons named in Items 4 and 5 of this application where the applicant is a "public company." For the purpose of this requirement, "public company" means a company whose securities are listed or designated on a national securities exchange or interdealer quotation system certified by the Commissioner of Corporations under subdivision (e) of Section 25100 of the Corporations Code.~~

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~~\*These documents shall be treated by the Department of Corporations as being received in confidence pursuant to paragraph (4) of subdivision (d) of Section 6254 of the Government Code.~~

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~~**EXHIBIT E.** A detailed plan of business that includes the following items: [Financial Code Section 50122(b) and 50130(b)(1).]~~

~~1. Describe in sufficient detail the business activities of the applicant.~~

~~[Financial Code Sections 50122(b) and 50130(b)(1).]~~

~~2. A statement that the applicant or its members, directors, or principals, as appropriate, are at least 18 years of age.~~

~~3. Information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any of the following:~~

~~a. Any person that owns or controls, directly or indirectly, 10 percent or more of any class of stock of the applicant. [Financial Code Sections 50122(b)(3)(A) and 50130(b)(1).]~~

~~b. Any person that controls, directly or indirectly, the election of 25 percent or more of the members of the board of directors of the applicant. [Financial Code Sections 50122(b)(3)(B) and 50130(b)(1).]~~

~~c. Any person or entity that significantly influences or controls the management of the applicant. [Financial Code Sections 50122(b)(3)(C) and 50130(b)(1).]~~

~~4. A description of any disciplinary actions filed against any other license under which the applicant conducts its business. [Financial Code Sections 50122(b)(4) and 50130(b)(1).]~~

- ~~5. A description of any adverse judgments entered in court actions filed by borrowers based upon allegations of fraud, misrepresentation, or dishonesty in the conduct of the applicant's business. [Financial Code Sections 50122(b)(5) and 50130(b)(1).]~~
- ~~6. A listing of all material judgments filed against the applicant, and all bankruptcy petitions filed by the applicant, for the preceding five years, and the disposition of each material judgment and bankruptcy petition. [Financial Code Sections 50121(b)(7) and 50130(f).]~~
- ~~7. Has applicant violated\* any provision of the California Real Estate Law (or the rules of the Real Estate Commissioner thereunder), the California Finance Lenders Law or the California Personal Property Brokers Law, California Consumer Finance Lenders Law or California Commercial Finance Lenders Law (or the rules of the Commissioner of Corporations under any of those laws), any other California financial institution or lending law, California Residential Mortgage Lending Act (or the rules of the Commissioner of Corporations adopted thereunder), or any provision of the laws or rules of this state or another state or foreign country relating to residential mortgage lending, brokering or servicing? If the answer is "yes", set forth below the name(s) of the state(s) or foreign country(ies), the specific provision(s) of the law(s) and rule(s), and the date(s) and disposition(s) of the violation(s). (Attach additional sheets, if necessary.) [Financial Code Sections 50126(a)(3) and 50130(f).]~~

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8. ~~Has any officer, director, partner, member, trustee or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant violated\* any provision of the California Real Estate Law (or the rules of the Real Estate Commissioner thereunder), the California Finance Lenders Law or the California Personal Property Brokers Law, California Consumer Finance Lenders Law or California Commercial Finance Lenders Law (or the rules of the Commissioner of Corporations under any of these laws), any other California financial institution or lending law, California Residential Mortgage Lending Act, (or the rules of the Commissioner of Corporations adopted thereunder), or any provisions of the laws or rules of this state or another state or foreign country relating to residential mortgage lending, or servicing? If the answer is "yes", set forth below the name(s) of the state(s) or foreign country(ies), the specific provision(s) of the law(s) and rule(s), and the date(s) and disposition(s) of the violation(s). (Attach additional sheets, if necessary.)~~

~~[Financial Code Sections 50126(a)(3) and 50130(f).]~~

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~~\*For the purposes of this question, "violated" means that the applicant: (1) either has been convicted or pled nolo contendere to a felony or misdemeanor; (2) has been held liable in a civil action by final judgment; (3) is or has been permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction; and (4) is or has been subject to any order of a commission or administrator under any law or rule referred to in this question. If the conviction has been overturned or reversed on appeal, provide a copy of the order and any other documents necessary to explain the final disposition.~~

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9. ~~A list of officers, directors, partners, members, trustees, or persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant who has, within the last 10 years:~~
- ~~a. Been convicted of, or plead nolo contendere to, a crime; or~~
  - ~~b. Committed any act involving dishonesty, fraud or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person~~

engaged in business in accordance with this Law. [Financial Code Sections 50126(a)(2) and 50130(f).]

~~**EXHIBIT F.** Complete the form entitled "Customer Authorization of Disclosure of Financial Records". This form **must be TYPEWRITTEN** and signed by a person authorized to sign on behalf of the applicant. [Financial Code Sections 50122(b)(7), 50130(b)(1) and 50314(a).]~~

~~**EXHIBIT G.** Provide a detailed statement describing any other business not coming within the purview of the California Residential Mortgage Lending Act that the applicant is proposing to be conducted on the same premises as, or in association or conjunction with, the business to be licensed. [Financial Code Section 50120(d).]~~

~~**EXHIBIT H.** If the applicant will be doing business under a fictitious business name, provide a copy of the Certificate of Filing and Proof of Publication, both of which bear the County Clerk's filing stamp. Refer to Section 17000 of the Business and Professions Code for the requirements of filing this statement. [Financial Code Sections 50120(b) and 50130(a).]~~

~~**EXHIBIT I.** If the applicant is incorporated in the State of California (**domestic** corporation) submit a certificate of good standing or qualification duly executed not more than sixty days before filing this application by the Secretary of State of California showing that the applicant is authorized to do business in this State. [Financial Code Sections 50122(b)(7) and 50130(b)(1).]~~

~~**EXHIBIT J.** Submit the following if the applicant is incorporated outside of the State of California (**foreign** corporation): [Financial Code Sections 50122(b)(7) and 50130(b)(1).]~~

- ~~1. Name and address of the principal agent in California.~~
- ~~2. A certificate of good standing or qualification duly executed not more than sixty days before filing this application by the Secretary of State of the foreign state, or other proper authority showing that the applicant is authorized to transact business in that state.~~
- ~~3. A consent to service of process as required by Section 1950.122.1. Service made pursuant to the terms of the consent to service of process shall have the same force and validity as if served personally on the applicant. **SEE COMMISSIONER'S RULE 1950.122.1.**~~
- ~~4. A certificate of good standing or qualification duly executed not more than sixty days before the filing of this application by the Secretary of State of California showing that the applicant is authorized to do business in California.~~

~~**EXHIBIT K.** If the applicant is a **Limited Partnership** or **Limited Liability Company** (**domestic** business entity) submit a certificate of good standing, qualification, or other document duly executed not more than sixty days before filing this application by the Secretary of State of California showing that the applicant is authorized to do business in this State.  
[Financial Code Section 50122(b)(7) and 50130(b)(1).]~~

~~**EXHIBIT L.** Submit the following if the applicant is a **Trust, Limited Partnership** or **Limited Liability Company** organized outside of the State of California (**foreign** business entity):  
[Financial Code Sections 50122(b)(7) and 50130(b)(1).]~~

- ~~1. Name and address of the principal agent in California.~~
- ~~2. A certificate of good standing, qualification, or other document duly executed not more than sixty days before filing this application by the Secretary of State of the foreign state, or other proper authority showing that the applicant is authorized to transact business in that state.~~
- ~~3. A consent to service of process as required by Section 1950.122.1. Service made pursuant to the terms of the consent to service of process shall have the same force and validity as if served personally on the applicant. **SEE COMMISSIONER'S RULE 1950.122.1.**~~
- ~~4. A certificate of good standing, qualification, or other document, duly executed not more than sixty days before the filing of this application, by the Secretary of State of California, showing that the applicant is authorized to do business in California.~~

~~**EXHIBIT M.** By signing the application as provided for on the Execution Page, the applicant agrees (or attests) to the following: [Financial Code Sections 50120(e), 50122(b)(7), 50124, 50130(b), 50130(g), 50301(g) and 50314.]~~

- ~~1. To maintain staff adequate to meet the requirements of the California Residential Mortgage Lending Act, as prescribed by rule or order of the Commissioner of Corporations.~~

- ~~2. To keep and maintain for 36 months from the date of final entry the business records and other information required by law or rules of the Commissioner of Corporations regarding any mortgage loan made or serviced in the course of the conduct of its business.~~
- ~~3. To file with the Commissioner of Corporations any report required under law or rule or order of the Commissioner.~~
- ~~4. To disburse funds in accordance with its agreements and to make a good faith and reasonable effort to effect closing in a timely manner.~~
- ~~5. To account or deliver to a person any personal property such as money, funds, deposit, check, draft, mortgage, other document, or thing of value, that has come into its possession and is not its property, or that it is not in law or equity entitled to retain under the circumstances, at the time that has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery.~~
- ~~6. To file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.~~
- ~~7. To notify the Commissioner of Corporations, in writing, by certified mail, return receipt requested, prior to opening a branch office in this state or changing its business locations(s) or the location(s) of any branch office(s) from which activities subject to the California Residential Mortgage Lending Act are conducted.~~

- ~~8. To comply with the provisions of the California Residential Mortgage Lending Act, and with any order or rule of the Commissioner of Corporations.~~
- ~~9. To submit to periodic and nonroutine examinations by the Commissioner of Corporations as required by the California Residential Mortgage Lending Act.~~
- ~~10. To advise the Commissioner of Corporations by amendment to this application of any material judgment filed against, or bankruptcy petition filed by, the applicant within five days of the filing.~~
- ~~11. Hereby attests that a board of director's resolution (or the resolution of the governing body of a person not a corporation) has been passed confirming that a register of all loans made or serviced under this license will be updated at least monthly, and that the information maintained in the register will include the name and address of the borrower, account number, amount of loan, date of loan, terms, total of payments and the annual percentage rate, and that the register will also show the account number, name of borrower and payoff date of all loans paid in full.~~
- ~~12. Hereby attests that the applicant has complied with all applicable state and federal tax return filing requirements for the past three years or has filed with the Commissioner of Corporations an independent certified public accountant's or attorney's statement as to why no return was filed.~~
- ~~13. Hereby attests that the applicant has not committed a crime under the laws of any state or the United States, involving moral turpitude, misrepresentation, fraudulent or dishonest~~

~~dealing, or fraud and has disclosed to the Commissioner of Corporations any final judgment entered against it in a civil action upon grounds or allegations of fraud, misrepresentation, or deceit.~~

~~14. Hereby attests that the applicant has not engaged in conduct that would be cause for denial of a license.~~

~~15. Hereby attests that the applicant is not insolvent.~~

~~16. Hereby attests that the applicant has acted with due care and competence in performing any act for which it is required to hold a license under the California Residential Mortgage Lending Act.~~

~~17. Hereby attests that the applicant will comply with all applicable requirements of California and federal law, including the California Civil Code and Section 2609 of the Real Estate Settlement Procedures Act of 1974, as amended, (12 U.S.C.A. Sec. 2601 et seq.) when servicing residential mortgage loans.~~

~~**EXHIBIT N.** Additional Licensing Requirements for Out of State Locations. [Financial Code Sections 50120(e) and 50130(e).]~~

~~*If the applicant's principal place of business is to be located outside of the State of California, the following items must be provided as an exhibit:*~~

~~1. The name, address, and phone number of the authorized individual to whom the California Department of Corporations can direct all inquiries regarding the California operations. Please also include the name, address, and phone number of the licensee's representative to contact in order to obtain the books, records, and accounts of the licensee and the location where they will be made available for inspection.~~

~~2. A statement as to the name, address and phone number of the individual responsible for informing the California Department of Corporations of any change in name, address, and phone number requested in Item 1 above.~~

~~3. Hereby attests that a board of director's resolution (or the resolution of the governing body of a person not a corporation) has been passed stating the following:~~

~~—Subject to the sole discretion of the California Commissioner of Corporations,~~

~~a. I (we) agree to make available to the Commissioner of Corporations or the Commissioner's representatives, at a location in this state designated by the Commissioner of Corporations, or the Commissioner's representatives, the books, accounts, papers, records and files within 10 calendar days of any request from the Commissioner.~~

**OR**

b. ~~To pay the reasonable expenses for travel, meals, and lodging of the Commissioner of Corporations, or the Commissioner's representatives incurred during any investigation or examination made at the licensee's location outside this state.~~

**~~[The next page is the Execution Page.]~~**

## **EXECUTION PAGE**

~~Please indicate the name, address, title, and telephone number of the person who should be contacted for information regarding this application. The license will be mailed to this person unless otherwise instructed.~~

Attention: \_\_\_\_\_

(Name)

(Title)

(Telephone Number)

\_\_\_\_\_  
(Number and Street)

(City)

(State)

(Zip Code)

~~In the event of the issuance of a license, applicant agrees to comply with the requirements of the California Residential Mortgage Lending Act and rules adopted, and orders issued, by the Commissioner of Corporations, and further agrees that in the event of any change of its officers, directors, or any persons named in this application, that a verified amendment to the application reflecting such change shall within fifteen business days from the date of the change, be filed with the Commissioner of Corporations setting forth the change, the effective date of the change, the names of~~

~~the persons involved in the change, and a statement of the qualifications of each successor person.~~

~~[Financial Code Sections 50122(b)(7), 50124(a)(6) and 50130(b)(1).]~~

~~WHEREFORE, applicant requests that a license be issued by the Commissioner of Corporations authorizing applicant to engage in business under the California Residential Mortgage Lending Act within the State of California.~~

~~The applicant has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized.~~

\_\_\_\_\_  
\_\_\_\_\_  
(Applicant)

By \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
\_\_\_\_\_  
(Title)

~~The undersigned, on behalf of the applicant, acknowledges that this application and all exhibits thereto which are not designated as confidential are subject to public inspection pursuant to Section 250.9.1, Chapter 3, Title 10, California Code of Regulations. A request for confidentiality of certain documents~~

~~may be requested pursuant to Section 250.10. If a request for confidential treatment is granted (or denied), the person making such request will be notified in writing.~~

~~I certify (or declare) under penalty of perjury that I have read the foregoing application, including all Exhibits attached thereto, or filed therewith, and know the contents thereof, and that the statements therein are true and correct.~~

Executed at \_\_\_\_\_

\_\_\_\_\_  
(Signature of Declarant)

Date \_\_\_\_\_

\_\_\_\_\_  
(Typed Name)

**~~IF EXECUTED OUTSIDE THE STATE OF CALIFORNIA, ATTACH A VERIFICATION EXECUTED AND SWORN TO BEFORE A NOTARY PUBLIC.~~**

~~Note: Authority cited: Section 50304, Financial Code. Reference: Sections 50003, 50120, 50121, 50122, 50124, 50126, 50130, 50201, 50205, 50301, 50314 and 50317, Financial Code; and Section 11077.1, Penal Code.~~

§ 1950.122. Electronic Filings.

(a) DESIGNATION: The Commissioner designates the Nationwide Mortgage Licensing System (NMLS) owned and operated by the State Regulatory Registry LLC (SRR), a wholly-owned subsidiary of the Conference of State Bank Supervisors (in cooperation with the American Association of Residential Mortgage Regulators) to receive and store filings, obtain fingerprints, obtain credit reports, and collect related fees from applicants and state-licensed residential mortgage lenders, mortgage

servicers, residential mortgage lender and servicers, and mortgage loan originators on behalf of the Commissioner.

(b) USE OF NMLS: All residential mortgage lender, mortgage servicer, residential mortgage lender and servicer, and mortgage loan originator applications, amendments, reports, notices, related filings, renewals, authorizations, and fees required to be filed with the Commissioner shall be filed electronically with and transmitted to NMLS, except as otherwise indicated in these rules. The following conditions relate to such electronic filings:

(1) Electronic Signature: When a signature or signatures are required by the particular instructions of any filing, including any attestation to be made through NMLS, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate field and submitting the filing to the Commissioner through NMLS. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual making the filing.

(2) When filed: Solely for purposes of a filing made through NMLS, unless otherwise specified, a document is considered filed with the Commissioner when all fees are received and the filing is transmitted by NMLS to the Commissioner.

(3) An applicant shall provide through NMLS the necessary authorizations so that NMLS may obtain independent credit reports, fingerprinting and criminal background checks.

(4) Any documents required to be filed with the Commissioner that is not permitted to be filed with or cannot be transmitted through NMLS shall be filed in paper directly with the Commissioner.

Note: Authority cited: Sections 50002, 50120 and 50304, Financial Code.

Reference: Section 1633.7, Civil Code; and Sections 50003, 50120 and 50146, Financial Code.

31. Section 1950.122.2 is amended to read:

§ 1950.122.2. Notice of Officers, Directors, Partners, "Control" Persons, Managers, Members, Trustees and Employees.

(a) The notice to accompany the filing of an individual's fingerprints required in the following circumstances shall be made on the form set forth in subsection (c) of this rule:

(1) In compliance with the requirements of ~~Exhibit E to Item 9~~ for a license application in Section 1950.122.4 of these rules ~~the application for license (Rule 1950.122);~~

(2) In compliance with the requirements for filing an application for change of control (Rule 1950.206);

(3) In compliance with Section 50317(a) of the Code for an officer, director, partner, shareholder controlling 10 percent or more of the ownership interests or trustee of a licensed residential mortgage lender, residential mortgage lender and servicer, or residential mortgage loan servicer whose office, employment, ownership interest or other participation in the licensed business commenced after January 1, 1995; or

(4) In compliance with the requirements of Rule 1950.301 for certain employees.

(5) For purposes of this section, an individual who has submitted fingerprints through NMLS as part of the application for a mortgage loan originator license is not required to submit a additional set of fingerprints under this rule.

(b) For the purpose of ~~clause~~ paragraph (4) of subsection (a) of this rule, "employee" means (1) an individual with access to or responsibility for trust funds held by a licensed residential mortgage lender, residential mortgage lender and servicer, mortgage loan originator, or residential mortgage loan servicer, and (2) employed by such licensee after January 1, 1995.

(c) The notice shall be made on the following form:

Fee: \$20.00 + DOJ Noncriminal Applicant Fingerprint Fee

(Fees should include the Department of Corporations' filing fee of [\$20.00] and the fee charged by the Department of Justice [Penal Code Section 11105] for processing Noncriminal Applicant Fingerprints.)

Receipt No. \_\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF CORPORATIONS  
320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-1105  
(213) 576-7690

*NOTICE OF OFFICERS, DIRECTORS, PARTNERS, "CONTROL" PERSONS, MANAGERS,  
MEMBERS, TRUSTEES AND EMPLOYEES OF A RESIDENTIAL MORTGAGE LENDER,  
RESIDENTIAL MORTGAGE LENDER AND SERVICER OR  
RESIDENTIAL MORTGAGE LOAN SERVICER\**

\_\_\_\_\_  
Special Instruction: Read

OFFICIAL USE ONLY
LAST NAME _____
Date submitted CII: _____
Applicant I.D.# _____

Financial Code Section 50317

Before completing this notice.

**PLEASE PRINT OR TYPE**

**NAME OF COMPANY:** \_\_\_\_\_

**FILE NO.** \_\_\_\_\_

**ADDRESS OF MAIN OFFICE:** \_\_\_\_\_

(Street)

(City)

(State) (Zip Code)

**EMPLOYING BRANCH OFFICE:**

**NAME OF OFFICER, DIRECTOR, PARTNER, "CONTROL" PERSON [Financial Code Section 50003(e)], MANAGER, MEMBER, TRUSTEE AND EMPLOYEE:**

(Last)

(First)

(Middle)

**POSITION HELD OR TO BE HELD:** \_\_\_\_\_

**HOME ADDRESS:** \_\_\_\_\_

(Street)

(City)

(State)

(Zip Code)

**HEIGHT:** \_\_\_\_\_ **WEIGHT:** \_\_\_\_\_ **SEX:** \_\_\_\_\_ **COLOR OF EYES:** \_\_\_\_\_

**COLOR OF HAIR:** \_\_\_\_\_

---

\* This document shall be treated by the Department of Corporations as being received in confidence pursuant to paragraph (4) of subdivision (d) of Section 6254 of the Government Code.

Note: Authority cited: Section 50304, Financial Code. Reference: Sections 50121, 50122, 50130, 50140 and 50317, Financial Code.

32. Section 1950.122.2.1 is adopted to read:

§ 1950.122.2.1. Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required.

(a) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall at all times maintain on file with NMLS in accordance with its procedures for transmission to the Commissioner, a current list of officers, directors, and partners in the case of a partnership, and other persons named in the Forms MU1, MU2, MU3, and MU4, as applicable. In the event of any change in the officers, directors, partners, or other persons named in the application, other than transfers between branch offices, a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall file with NMLS in accordance with its procedures for transmission to the Commissioner, an amendment to the application containing the same information in relation to such new person(s) as is required in the Forms MU1, MU2, MU3, and MU4.

(b) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 50140, 50146 and 50304, Financial Code.  
Reference: Section 50146, Financial Code.

33. Section 1950.122.4 is adopted to read:

§ 1950.122.4. License Application for Residential Mortgage Lender, Mortgage Servicer, and Residential Mortgage Lender and Servicer.

The procedures set forth in this section are applicable to a person who is required to be licensed pursuant to Section 50002 of the Code as a residential mortgage lender, mortgage servicer, or as a residential mortgage lender and servicer. The application for a license as a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall be filed as follows:

(a) INITIAL APPLICATION: The application for a license as a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer under subdivision (a) of Section 50002 of the Code and any amendment to such application shall be filed upon Form MU1 (Uniform Mortgage Lender/Mortgage Broker Form) and any exhibits, in accordance with the instructions of NMLS for transmission to the Commissioner. Exhibits that cannot be submitted through NMLS shall be submitted directly to the Commissioner. An applicant shall provide the following information, exhibits and documentation in the manner provided:

(1). An applicant shall identify all fictitious business names on Form MU1.

(A) For each fictitious business name, an applicant shall submit directly to the Commissioner a Fictitious Business Name Statement bearing the seal of the county clerk.

(B) An applicant may not use a fictitious business name until the Commissioner approves the use of the name. An applicant may not permit a mortgage loan originator sponsored by the applicant or a branch office to use any name not approved by the Commissioner.

(C) Every applicant and licensee shall comply with the rules governing the filing of a fictitious business name set forth in Business and Professions Code Section 17900 et seq.

(2) For every additional business location, an applicant shall submit through NMLS a Uniform Mortgage Branch Office Form (Form MU3) in accordance with Section 1950.122.4.1 of these rules.

(3) An applicant shall provide the names, personal history, and experience of individual applicants, officers, directors, managing members (in the case of a limited liability company), general and managing partners (in the case of a partnership), and control persons (both direct and indirect) of the applicant through NMLS on Form MU1 within the "Directors and Executive Officers" section and on the Uniform Mortgage Biographical Statement & Consent Form (Form MU2).

(A) The named individuals shall provide authorization for, and subsequent delivery of, fingerprints to NMLS or the California Department of Justice, or both, as applicable.

(B) An applicant shall pay all fees required for the criminal history background check.

(4) An applicant shall submit through NMLS as an exhibit to Form MU1 audited financial statements with an unqualified opinion prepared by an independent certified public accountant in accordance with generally accepted accounting principles and acceptable to the Commissioner. The audited financial statements shall be prepared as of the applicant's most recent fiscal year end, or a more recent date, and must document a minimum tangible net worth of \$250,000.

(5) An applicant shall submit directly to the Commissioner a Customer Authorization of Disclosure of Financial Records (Form QR 500.261 (1/00), hereby

incorporated by reference), and maintain a copy in the applicant's books and records as provided in Section 50314 of the Code. This authorization is effective as of the date of execution and shall remain effective until five years after the surrender or revocation of the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer license. The authorization may not be revoked.

(6) In addition to the identification of business activities requested on Form MU1, an applicant shall submit a detailed description of the applicant's business activities directly to the Commissioner. If an applicant answers yes to either question (7)(A) or (7)(B) of Form MU1, the applicant must also submit an organizational chart.

(7) An applicant shall submit directly to the Commissioner evidence of surety bond in accordance with Section 1950.205.1 of these rules.

(8) If an applicant intends to engage in any activities not specified in Items 4 and 5 of Form MU1, the applicant shall submit this information directly to the Commissioner.

(9) Business entities shall submit the following documents directly to the Commissioner:

(A) A corporate applicant shall submit an original certificate of qualification or good standing from the California Secretary of State executed not more than sixty days before the filing of the application. The certificate must show that the applicant is authorized to transact business in the State of California.

(B) A foreign corporation shall submit an original certificate of qualification or good standing from the Secretary of State of the state of incorporation executed not more than 60 days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(C) A partnership applicant shall submit its partnership agreement.

(D) A limited partnership or limited liability company applicant shall submit an original certificate of qualification or good standing from the California Secretary of State executed not more than sixty days before the filing of the application, showing that the applicant is authorized to transact business in the State of California.

(E) A foreign limited partnership or limited liability company applicant shall submit an original certificate of qualification or good standing from the Secretary of State of the state of formation executed not more than sixty days before the filing of the application, showing that the applicant is authorized to transact business in that state.

(10) An applicant shall submit directly to the Commissioner evidence of federal agency approval for the applicant to engage in business as a lender or servicer of federally related mortgage loans, in accordance with subdivisions (l) and (p) of Section 50003 of the Code.

(11) Every applicant shall provide a registered agent for service of process in item 2(A) of Form MU1 that is located within the state of California.

(12) An applicant shall provide its website information through NMLS on Form MU1.

(b) FILING FEE: Pursuant to Section 50121 of the Financial Code, the application fee (\$900), the investigation fee (\$100) and the fingerprint processing fees (\$20 per set to the Department of Corporations and additional fees for the Department of Justice) related to the fingerprint and criminal background checks, if applicable, shall be paid through NMLS for transmission to the Commissioner. The payment of some fees may be required to be filed directly with the Commissioner until such time as NMLS can accept the fee. Fees are not refundable.

(c) COMPLETION OF FILING AND ISSUANCE OF LICENSE: An application for licensure as a residential mortgage lender, mortgage servicer, or residential mortgage lender

and servicer is not deemed complete until all required fees, all required submissions, and all background and investigative reports are received by the Commissioner. The filing of Form MU1 with NMLS does not constitute automatic approval of a license. The residential mortgage lender, mortgage servicer, or residential mortgage lender and mortgage servicer shall not consider the application approved until it is approved by the Commissioner and a license is issued to the applicant. In accordance with Section 50126(b), the Form MU1 application may be considered withdrawn if the Commissioner does not receive the requested information contained in the notification of a deficiency within 90 days of the notification.

(d) FILING AN AMENDMENT: In the event of a change to the information in the application, or exhibits thereto, the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer applicant or licensee shall file an amendment to the Form MU1, MU2 or MU3 through NMLS in accordance with the procedures in Section 1950.122.9 of these rules. Prior to the issuance of a license, any amendment to an application shall be filed within five (5) days. Any change that cannot be reported through NMLS shall be reported directly to the Commissioner.

(e) TRANSITION FOR EXISTING LICENSEES: A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer that holds a license under the California Residential Mortgage Lending Act must file Forms MU1, MU2 and MU3 with NMLS and submit these forms to the Commissioner for approval by July 31, 2010. The Commissioner will not approve the sponsorship of a mortgage loan originator until the Commissioner has approved the transition of the licensee's application onto NMLS.

Note: Authority cited: Sections 50002, 50120 and 50304, Financial Code. Reference: Section 1798.17, Civil Code; Section 7473, Government Code; Sections 50002, 50002.5,

50120(e), 50122(b)(7), 50124, 50130(b), 50130(g), 50301(g), 50314 and 50146, Financial Code; Section 17520, Family Code; and Section 11077.1, Penal Code.

34. Section 1950.122.4.1 is adopted to read:

§ 1950.122.4.1. Branch Office Instructions for Residential Mortgage Lenders, Mortgage Servicers, and Residential Mortgage Lenders and Servicers.

(a) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer that seeks to engage in business at an additional location must submit an application for a branch office by submitting Form MU3 (Uniform Mortgage Branch Office Form) in accordance with the instructions of NMLS for transmission to the Commissioner at least ten days (10) before engaging in business at the location.

(b) An applicant that intends to conduct business at the branch office under a fictitious business name not already approved by the Commissioner shall submit a copy of the Fictitious Business Name Statement with the “filed stamp” from the county clerk’s office and may not use the name until the Commissioner approves the use of the name.

(c) An applicant shall indicate the branch manager as a branch manager on the Form MU3 and submit to NMLS a Form MU2 (Biographical Statement & Consent Uniform Mortgage Lender/Mortgage Broker Form) for each branch manager.

(1) Each branch manager shall provide authorization for, and delivery of, fingerprints and related information to NMLS and the California Department of Justice, as applicable.

(2) Each location must have a branch manager and the same individual may not be a branch manager of multiple locations.

(d) The Commissioner may request additional information, documentation or detail pertaining to the branch office application be filed directly with the Commissioner.

(e) Application, investigation, and criminal history background check fees shall be paid by the applicant or licensee to NMLS for transmission to the Commissioner. Any applicable fees that cannot be paid through NMLS shall be paid directly to the Commissioner. Fees are not refundable.

Note: Authority cited: Section 50124, Financial Code. Reference: Section 50124, Financial Code.

35. Section 1950.122.5 is adopted to read:

§ 1950.122.5. Mortgage Loan Originator Application Procedures.

(a) ESTABLISHING A RELATIONSHIP IN NMLS: A licensed residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall sponsor in NMLS each mortgage loan originator employed by it. To sponsor a mortgage loan originator, a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer applicant or licensee must:

(1) Obtain a unique identifier through NMLS,

(2) Obtain for its records, evidence that each mortgage loan originator meets the qualification requirements of Section 1950.5.1 of these rules, and

(3) Ascertain (by investigation) the character, business reputation and experience of any individual mortgage loan originator, prior to executing any transaction on behalf of the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer. Evidence of compliance with this paragraph shall be maintained as a part of the records of the licensee as required by Section 1950.314.4 of these rules.

(b) Upon the employment of an individual as a mortgage loan originator, a mortgage lender, mortgage broker, or mortgage lender and broker shall ensure that the mortgage loan originator files a Uniform Individual Mortgage License/ Registration &

Consent Form (Form MU4) in NMLS for submission to the Commissioner and obtains a mortgage loan originator license.

(c) A mortgage loan originator sponsorship is not approved until the Commissioner approves the sponsorship and issues the mortgage loan originator a license. A sponsorship will not be approved until the sponsoring residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer has obtained a license through NMLS or has transitioned its license onto NMLS in accordance with Section 1950.122.4 of these rules.

(d) A mortgage loan originator applicant must complete all license requirements, including, but not limited to the payment of all required fees prior to transmitting the application to the Commissioner. The fee for an application as a mortgage loan originator is one hundred dollars (\$100), which shall be paid through NMLS for transmission to the Commissioner, plus twenty dollars (\$20) for the processing of a criminal history background check. For a mortgage loan originator applicant that obtains a unique identifier from NMLS and designates California as his or her state of licensure on or before March 31, 2010, the application fee is waived. The application fee shall constitute the mortgage loan originator's license fee for the remainder of the year in which a license is issued. The fees in this subsection are in addition to any fees required by NMLS, the Department of Justice, the Federal Bureau of Investigation, or any other party for the processing of criminal history background checks, credit reports, testing, education, or any other licensure requirement under the California Residential Mortgage Lending Act.

(e) The Form MU4 application may be considered withdrawn if the Commissioner does not receive the requested information contained in the written notification of a deficiency within 90 days of the notification.

(f) In accordance with Section 50002.5 of the Code, a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall not permit a mortgage loan originator whose license or license sponsorship has lapsed, or whose license sponsorship is not in effect, to engage in activities of a mortgage loan originator unless the mortgage loan originator's license has been reinstated pursuant to the procedures set forth in Section 1950.5.4 of these rules.

(g) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall require every sponsored mortgage loan originator to file an amendment to his or her Form MU4 through NMLS within twenty (20) days of any change to the information contained in the Form MU4.

(h) A mortgage loan originator may not engage in business under any name other than a name approved by the Commissioner for use by the sponsor of the mortgage loan originator.

(i) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall be responsible for the acts, practices, and conduct of its sponsored mortgage loan originator in connection with the making, brokering, servicing, or origination of residential mortgage loans until such time that the sponsorship of the mortgage loan originator is terminated through the NMLS. Termination procedures shall be as follows:

(1) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall terminate the sponsorship of a mortgage loan originator through the NMLS within fifteen (15) days after the termination of an individual, and shall clearly state the reason(s) for termination.

(2) A mortgage loan originator shall file an amendment to Form MU4 to terminate a relationship with a residential mortgage lender, mortgage servicer, or residential

mortgage lender and servicer within 15 days of the termination. A mortgage loan originator may not originate loans under the authority of the California Residential Mortgage Lending Act unless he or she has a valid license and the mortgage loan originator has a sponsorship approved by the Commissioner.

(j) PROCEDURES FOR A SOLE PROPRIETOR MORTGAGE LOAN

ORIGINATOR: A sole proprietor mortgage loan originator must:

(1) File Forms MU1 and MU2 (biographical information) and obtain a license as a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer, and

(2) File Form MU4 and obtain a license as a mortgage loan originator.

Note: Authority cited: Sections 50002, 50120 and 50304, Financial Code.

Reference: Sections 50002, 50002.5, 50120, 50123, 50126(b), 50140 and 50146, Financial Code.

36. Section 1950.122.5.1 is adopted to read:

§ 1950.122.5.1. Qualifications of Mortgage Loan Originator Applicants.

Every applicant for a mortgage loan originator license shall meet the requirements of this section.

(a) QUALIFIED WRITTEN TEST: Every applicant for a mortgage loan originator license shall pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry within one year prior to the date of filing the application for, or the issuance of, a mortgage loan originator license. The qualified written test shall consist of a national component and a California component.

An applicant shall abide by the rules, policies and procedures of the Nationwide Mortgage Licensing System and Registry in the administration of the test.

(b) EDUCATION: Every applicant for a residential mortgage loan originator license shall complete at least 20 hours of NMLS approved education including:

(1) Three hours of instruction on federal law and regulations,

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues, and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Note: Authority cited: Section 50304, Financial Code. Reference: Sections 50142 and 50143, Financial Code.

37. Section 1950.122.5.2 is adopted to read:

§ 1950.122.5.2. Evidence of Financial Responsibility.

(a) The Commissioner's finding required by subdivision (c) of Section 50141 of the California Residential Mortgage Lending Act relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the role of a mortgage loan originator.

(b) An applicant for a mortgage loan originator license shall authorize NMLS to obtain the applicant's current credit report. The credit report will be used as needed to validate the applicant's responses to the electronic application form, in order to support the Commissioner's finding required by subdivision (c) Section 50141 of the California Residential Mortgage Lending Act.

(c) An applicant may be precluded from obtaining a mortgage loan originator license where his or her personal history includes:

(1) Any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or

(2) Other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

Note: Authority cited: Sections 50140 and 50304, Financial Code. Reference: Section 50141, Financial Code.

38. Section 1950.122.5.3 is adopted to read:

§ 1950.122.5.3. Continuing Education and Renewal Procedures for Mortgage Loan Originators.

(a) A mortgage loan originator license shall be renewed on an annual basis between November 1 and December 31. A license not renewed during the specified time period shall be deemed a lapsed or expired license. A mortgage loan originator with a lapsed or expired license may not engage in business as a mortgage loan originator until the mortgage loan originator's license is reinstated pursuant to Section 1950.122.5.4 of these rules.

(b) To renew a license under subsection (a) of this rule, a licensed mortgage loan originator shall complete at least eight hours of NMLS approved continuing education on or before December 31<sup>st</sup> of every year, which shall consist of the following:

(1) Three hours of instruction on federal law and regulations,

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues, and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Note: Authority cited: Sections 50140 and 50304, Financial Code. Reference: Sections 50144 and 50145, Financial Code.

39. Section 1950.122.5.4 is adopted to read:

§ 1950.122.5.4. Reinstatement of License as a Mortgage Loan Originator.

(a) A mortgage loan originator license that has not been renewed between November 1 and December 31 is a lapsed or expired license. A mortgage loan originator with a lapsed or expired license is not authorized to continue doing business as a mortgage loan originator unless his or her license is reinstated.

(b) A mortgage loan originator may reinstate an expired license if the following conditions are met:

(1) The mortgage loan originator must submit a request for reinstatement through NMLS after December 31 and before March 1 of the year immediately following the year the license expired.

(2) All continuing education courses and any other minimum requirements for the license renewal for the year in which the license expired must be completed before March 1 following the year the license expired.

(3) The mortgage loan originator must pay the applicable license renewal, reinstatement, and any late fees or penalties.

(4) The mortgage loan originator must continue to meet minimum standards for renewal in Section 50141 of the Code.

(c) If a mortgage loan originator whose license has expired cannot meet the requirements for reinstatement specified in this section or submits a reinstatement filing on or after March 1, the mortgage loan originator must apply for a new license and meet the requirements for licensure in effect at that time.

Note: Authority cited: Sections 50002, 50120 and 50304, Financial Code.

Reference: Sections 50130, 50141, 50142, 50143, 50144, 50145 and 50146, Financial Code.

40. Section 1950.122.6 is adopted to read:

§ 1950.122.6. Supervision of Mortgage Loan Originators.

(a) Every residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall exercise diligent supervision over the mortgage loan origination, lending and servicing activities of every mortgage loan originator that it sponsors.

(b) Every mortgage loan originator employed by a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall be subject to the supervision of a branch manager designated by such residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer. Every branch manager shall be identified on Form MU3 and shall submit a Form MU2 to NMLS.

(c) Every residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall establish, maintain, and enforce written procedures, a copy of which shall be kept in each business office, that set forth the procedures adopted by the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer to comply with the duties imposed by this section.

(d) Every residential mortgage lender, mortgage servicer, and residential mortgage lender and servicer shall designate a Supervisor, an individual, who shall:

(1) Supervise and periodically review the activities of the branch managers designated pursuant to subsection (b) of this section; and

(2) Periodically inspect each business office of the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer to ensure that the written procedures are enforced.

(3) In the event a residential mortgage lender, mortgage servicer, and residential mortgage lender and servicer does not have any branches offices, the Supervisor shall directly supervise and review the activities of the mortgage loan originators.

(e) The Supervisor shall be identified on Form MU1 as a qualifying individual and shall submit a Form MU2. For purposes of these rules, a qualifying individual is a person in charge and responsible for the actions of the mortgage lender, mortgage broker, and mortgage lender and broker.

(f) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 50002 and 50304, Financial Code. Reference: Sections 50124 and 50128, Financial Code.

41. Section 1950.122.7 is adopted to read:

Section 1950.122.7. Statement of Citizenship, Alienage, and Immigration Status.

Any individual (e.g. sole proprietor or mortgage loan originator) who is applying for any license under the California Residential Mortgage Lending Act shall file the Statement of Citizenship, Alienage, and Immigration Status and any accompanying documentation directly with the Commissioner in accordance with Sections 250.60 and 250.61 of these rules.

Note: Authority cited: Sections 22150 and 50304, Financial Code; and Section 1344, Health and Safety Code. Reference: Sections 22101, 50122 and 50130,

Financial Code; Section 1351, Health and Safety Code; and 8 U.S.C. Sections 1621, 1641 and 1642.

42. Section 1950.122.8 is adopted to read:

§ 1950.122.8. Notices to be Incorporated into Forms MU1, MU2, MU3, and MU4.

(a) The following notices required by state and federal law are hereby incorporated by reference as part of any uniform form to be filed through NMLS:

NOTICES REQUIRED UNDER STATE AND FEDERAL LAW  
INFORMATION PRACTICES ACT OF 1977  
(California Civil Code Section 1798.17)

(a) The Department of Corporations of the State of California is requesting the information specified in the application for licensure of residential mortgage lenders, mortgage servicers, residential mortgage lender and mortgage servicers, and mortgage loan originators.

(b) The Chief Administrative Officer, 1515 K Street, Suite 200 Sacramento, CA 95814, telephone (916) 445-5541, is responsible for the system of records and shall, upon request, inform individuals regarding the location of the Department of Corporations' records and the categories of persons who use the information in the records.

(c) The records are maintained pursuant to the California Residential Mortgage Lending Act (Financial Code Section 50000, et seq.).

(d) The submission of all items of information is mandatory unless otherwise noted. Section 17520 of the Family Code requires the Department of Corporations to collect social security numbers from all applicants. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(e) Failure to provide all or any part of the information requested may preclude the Department of Corporations from approving the application.

(f) The principal purposes within the Department of Corporations for which the information is to be used are to determine whether (1) a license, registration, or other authority, as allowed under the law, should be accepted, granted, approved, denied, revoked or limited in any way; (2) business entities or individuals licensed or otherwise regulated by the Department of Corporations are conducting themselves in accordance with applicable laws; and/or (3) laws administered by the Department of Corporations are being or have been violated and whether administrative action, civil action, or referral to appropriate federal, state or local law enforcement or regulatory agencies, as authorized by law, is appropriate.

(g) Any known or foreseeable disclosures of the information pursuant to subdivision (e) or (f) of Civil Code Section 1798.24 may include transfers to other federal, state, or local law enforcement or regulatory agencies, as authorized by law.

(h) Except for Section 50151 of the Financial Code, the Information Practices Act grants an individual a right of access to personal information concerning the requesting individual that is maintained by the Department of Corporations.

#### FEDERAL PRIVACY ACT OF 1974 (Public Law 93-579)

In accordance with Section 7 of the Privacy Act of 1974 (found at 5 U.S.C. § 552a note (Disclosure of Social Security Number)), the following is information on whether the disclosure of a social security account number is voluntary or mandatory, by what statutory or other authority such number is solicited, and what uses will be made of it.

(1) Section 17520 of the Family Code requires the Department of Corporations to collect social security numbers from all applicants. The Privacy Act of 1974 prohibits a state agency from denying an individual any right, benefit or privilege provided by law because of the individual's refusal to disclose the individual's social security account number.

(2) A social security account number is solicited pursuant to one or more of the following authorities: Sections 1950.122 of Title 10, California Code of Regulations; and Section 17520 of the Family Code.

(3) For all persons disclosing a social security account number, the number may be used, in addition to other information provided, to conduct a background investigation of the individual by the Department of Justice's Identification and Information Branch or by other federal, state or local law enforcement agencies, as authorized by law. The social security number may also be used to respond to requests for this number made by child support agencies.

Note: Authority cited Sections 50002, 50120 and 50304, Financial Code.

Reference: Section 1798.17, Civil Code; Sections 50003, 50120, 50146 and 50151, Financial Code; Section 17520, Family Code; Sections 7470, 7473, 7490 and 13140-13144, Government Code; and Section 7 of Public Law 93-579 (5 U.S.C. Section 552a note).

43. Section 1950.122.9 is adopted to read:

§ 1950.122.9. Notice of Changes by Residential Mortgage Lender, Mortgage Lender Servicer, Residential Mortgage Lender and Servicer, and Mortgage Loan Originator.

(a) Each licensed residential mortgage lender, mortgage servicer, residential mortgage lender and servicer, or mortgage loan originator shall, upon any change in the information contained in its application for license (other than financial information contained therein), promptly file an amendment to such application setting forth the changed information.

(b) A residential mortgage lender, mortgage servicer, and residential mortgage lender and servicer shall file changed information contained in its Forms MU1, MU2, and MU3, and any exhibits thereto, through NMLS in accordance with its procedures for transmission to the Commissioner. Any change that cannot be submitted through NMLS shall be filed directly with the Commissioner.

(c) A mortgage loan originator shall file changed information contained in its Form MU4, and any exhibits thereto, through NMLS in accordance with its procedures for transmission to the Commissioner within twenty (20) days of changes to the information. Any change that cannot be submitted through NMLS shall be filed directly with the Commissioner. A mortgage loan originator may not renew his or her license under Section 1950.122.5.3 of these rules until all changes to the information contained in his or her Form MU4 are filed with the Commissioner as provided in this section.

(d) A licensed residential mortgage lender, mortgage servicer, and residential mortgage lender and servicer shall notify the Commissioner of the employment of any new mortgage loan originator in California and of the termination of employment of any

mortgage loan originator in California in accordance with Section 1950.122.5 of these rules.

(e) If a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer discovers that its mortgage loan originator has not filed an amendment to his or her Form MU4 as required by subsection (c), the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall require the mortgage loan originator to file the amendment immediately. If, within five (5) days from the demand, the mortgage loan originator has not made the changes, the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer shall inform the Commissioner in writing.

(f) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 50002, 50120 and 50304, Financial Code.

Reference: Section 1798.18, Civil Code; and Sections 50126 and 50146, Financial Code.

44. Section 1950.122.10 is adopted to read:

§ 1950.122.10. Effectiveness of Residential Mortgage Lender, Mortgage Servicer, Residential Mortgage Lender and Servicer, and Mortgage Loan Originator Licenses.

(a) A license as a residential mortgage lender, mortgage servicer or residential mortgage lender and servicer under Section 50002 of the Code continues in effect until it is revoked or suspended by the Commissioner, or surrendered by the residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer and

the surrender has been accepted by the Commissioner pursuant to Section 50123 of the Code.

(b) A license as a mortgage loan originator under Section 50140 of the Code shall be renewed on an annual basis in accordance with Section 1950.122.5.3 of these rules.

Note: Authority cited: Sections 50002 and 50304, Financial Code. Reference: Sections 50002, 50123 and 50140, Financial Code.

45. Section 1950.122.11 is adopted to read:

§ 1950.122.11. Challenge Process or Information Entered Into NMLS.

(a) If an applicant or licensee disputes the accuracy or completeness of any material information entered into and maintained by NMLS, the applicant or licensee may submit a written request to the Commissioner to the attention of the Special Administrator, California Residential Mortgage Lending Act, Department of Corporations, 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, CA 90013-2344.

(b) The request shall include the applicant or licensee's name, unique identifier, a statement of the alleged inaccuracy or incompleteness of the information entered into NMLS, and its materiality, and shall provide any proof or corroboration available, including copies of official documents or court orders that support the changes requested by the applicant.

(c) Upon receipt of the request, the Commissioner shall investigate the request, along with any information provided, and determine if the information entered into NMLS is correctly reflected.

(d) If the Commissioner determines that the information is materially incorrect, the Commissioner shall request that the NMLS record be corrected.

(e) If the Commissioner denies the allegations of material inaccuracy or incompleteness in the NMLS record, the Commissioner shall notify the licensee or applicant in writing.

(f) Within 30 days from the mailing or service of the notification, the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code) for a determination of whether material inaccuracy or incompleteness exists in the record.

(g) If a material inaccuracy or incompleteness is found in any record, within 30 days of notice of the finding the Commissioner shall request that NMLS correct the information.

(h) Judicial review of the decision shall be governed by Section 11523 of the Government Code.

Note: Authority cited: Sections 50146 and 50304, Financial Code. Reference: Section 50150, Financial Code.

46. Section 1950.122.12 is adopted to read:

§ 1950.122.12. Shared Arrangements with Other Governmental Agencies: Confidentiality.

(a) For purposes of subdivisions (c) and (d) of Section 50150 and Section 50151 of the Code, the Commissioner is authorized to share any information or material that has been submitted to the NMLS to any governmental agency, including but not limited to, the Attorney General, the California Department of Justice, the U.S. Department of Justice, the Federal Bureau of Investigation, state or federal regulatory agencies, and county district attorney's offices. The information or material that is shared with a governmental

agency shall be accomplished without the loss of privilege or the loss of confidentiality protections provided by law.

(b) A residential mortgage lender, mortgage servicer, residential mortgage lender and servicer, and mortgage loan originator applicant may request that certain documents, or parts thereof, be treated confidentially. A request for confidentiality shall be in writing and made pursuant to Section 250.10 of these rules. If a request for confidential treatment is granted or denied, the person making such request will be notified in writing.

Note: Authority cited: Section 50304, Financial Code. Reference: Section 50150, Financial Code.

47. Section 1950.123 is amended to read:

§ 1950.123. Surrender of License as a Residential Mortgage Lender, Mortgage Servicer, Residential Mortgage Lender and Servicer, or Mortgage Loan Originator.

(a) An application to surrender a license as a residential mortgage lender, mortgage servicer, residential mortgage lender and servicer, or mortgage loan originator shall be filed on Form(s) MU1, MU2, MU3, or MU4 through NMLS in accordance with its procedures for transmission to the Commissioner. A licensee shall amend every branch office application Form MU3 and terminate the sponsorship of all mortgage loan originators.

(b) Prior to surrendering its license, a licensee-residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer must file a plan for approval by the Commissioner. The plan shall contain the licensee's detailed proposal for the orderly closing out of its residential mortgage lending or residential mortgage loan servicing business. At a minimum, the plan shall contain the following:

(a)(1) A detailed description of the plan to process to completion any loan applications pending which were received before the decision to surrender the license was made. In the alternative, the plan may describe the process for cancellation or completion of the loan by another licensee or exempt person.

(b)(2) A detailed description of the plan to transfer the licensee's existing servicing portfolio, including the time frame within which the transfer will be completed.

(c)(3) The time frame required for payout to the lender of all payments received from the borrowers, or the time frame required for transfer of payments received to another servicing licensee or exempt person.

Note: Authority cited: Section 50304, Financial Code. Reference: Section 50123, Financial Code.

48. Section 1950.204.3 is amended to read:

§ 1950.204.3. Prohibited Advertising.

(a) ~~Neither a~~ A residential mortgage lender, nor a residential mortgage loan servicer, residential mortgage lender and servicer, or mortgage loan originator shall not advertise that it or any of its officers, employees, or agents are "bonded," "supervised by," "regulated by," "audited by" or "examined by" the State of California or any agency thereof.

(b) ~~A residential mortgage lender, or residential mortgage loan servicer,~~ residential mortgage lender and servicer, or mortgage loan originator shall refer to its licensure under the Act in any written or printed communication or any communication by means of recorded telephone messages, telephonic or electronic media, or spoken on radio, television or similar communications media, only by the following statement:

"Licensed by the Department of Corporations under the California Residential Mortgage Lending Act."

(c) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 50304, Financial Code. Reference: Section 50204, Financial Code.

49. Section 1950.204.4 is amended to read:

§ 1950.204.4. "Blind" Advertising Prohibited.

A residential mortgage lender, residential mortgage lender and servicer, ~~or residential mortgage loan servicer, or mortgage loan originator~~ shall not use so-called "blind" advertisements. "Blind" advertising is an advertisement used to solicit business that gives only a telephone number, post office or newspaper box number, or name other than that of the licensee. The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 50304, Financial Code. Reference: Sections 50308 and 50314, Financial Code.

50. Section 1950.205.1 is adopted to read:

§ 1950.205.1. Surety Bond.

Every licensee shall maintain a surety bond in accordance with Section 50205 of the Financial Code as follows:

(a) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer that does not employ one or more mortgage loan originators shall post a surety bond in the amount of \$50,000. The amount may be increased by order of

the Commissioner upon a determination by the Commissioner that the licensee is not in compliance with any law, rule, or order.

(b) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer that employs one or more mortgage loan originators shall post a surety bond based on the dollar amount of residential mortgage loans originated or serviced, or both, by that licensee and its mortgage loan originator employees in the preceding year, as follows:

<u>Aggregate Loans</u>	<u>Bond Amount</u>
<u>0 - \$50,000,000</u>	<u>\$ 50,000</u>
<u>\$50,000,001 - \$500,000,000</u>	<u>\$100,000</u>
<u>Over \$500,000,001</u>	<u>\$200,000</u>

(c) A residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer applicant without a prior year operating history shall make a good faith estimate of the aggregate amount of loans anticipated to be originated in the upcoming year to determine the amount of the surety bond.

(d) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Section 50304, Financial Code. Reference: Section 50205, Financial Code.

51. Section 1950.209 is adopted to read:

§ 1950.209. Forms.

(a) The unique identifier of a licensed mortgage loan originator shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or Internet Web sites, whether in paper,

electronic, or any other format. The unique identifier number shall be so labeled and shall not be smaller than 8-point bold font.

(b) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 50146 and 50304, Financial Code. Reference: Section 50146, Financial Code.

52. Section 1950.301 is amended to read:

§ 1950.301. Fingerprinting of Certain Employees.

(a) If a licensee suffers a loss of trust funds as a result of the actions of an employee, as defined by subsection (b) of Rule 1950.122.2, and that employee is or was an individual prohibited from employment with a licensee under Section 50317(a) of the Code, then the Department, at the discretion of the Commissioner, may undertake to obtain a (1) Statement of Identity and Questionnaire, or similar report, including but not limited to the Form MU2, (2) notice under Rule 1950.122.2, and (3) fingerprints of all other such employees for the purpose of determining whether other prohibited individuals have been so employed by the licensee.

(b) A licensee shall cooperate fully with the Department in complying with the requirement of subsection (a).

Note: Authority cited: Section 50304, Financial Code. Reference: Sections 50140 and 50317, Financial Code.

53. Section 1950.307 is adopted to read:

§ 1950.307. Annual Report and Mortgage Call Report.

(a) In addition to the annual report required under Section 50307 of the Code, a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer, shall file the NMLS Mortgage Call Report required to be filed pursuant to Section 50307.2 of the Code with NMLS for transmission to the Commissioner.

(b) Every mortgage loan originator shall ensure that all residential mortgage loans that close as a result of his or her loan origination activities are included in the mortgage call reports submitted to NMLS or the Commissioner by his or her sponsoring residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer.

Note: Authority cited: Sections 50146 and 50304, Financial Code. Reference: Sections 50307 and 50307.2, Financial Code.

54. Section 1950.314.8 is amended to read:

§ 1950.314.8. Nontraditional, Adjustable Rate and Mortgage Loan Products.

(a) Best Practices. Every licensee shall implement best practices to manage loan product risk on a continuous basis. These best practices shall include practices set forth in the Guidance on Nontraditional Mortgage Product Risks published on November 14, 2006 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, which is hereby incorporated by reference, and the Statement on Subprime Mortgage Lending published on July 17, 2007 by the aforementioned entities and the National Association of Consumer Credit Administrators, which is hereby incorporated by reference. Both publications are collectively referred to herein as the "Guidance" and are available on the Department's web site at [www.corp.ca.gov](http://www.corp.ca.gov). A mortgage loan originator employed by a licensee shall follow the best practices policies and procedures developed by his or her employer. For

purposes of this section, "best practices" shall mean lawful processes, policies, and procedures to manage risks associated with use of nontraditional mortgage products and adjustable rate mortgage products as defined and prescribed by the Guidance.

(b) Written Compliance Report. In a separate written document, submitted as an addendum to its annual financial report and report of condition required under Section 50307 of the Financial Code, every licensee shall state whether it made or arranged nontraditional mortgage products and adjustable rate mortgage products, as defined by the Guidance, during the reporting period covered by the annual report. If any such loans were made or arranged, the licensee shall also explain how it has implemented best practices and explain whether and how it has put into effect the following internal controls or procedures during the reporting period: adopted processes, policies and procedures to ensure compliance with the Guidance; designated a compliance officer (including contact information of that officer) to ensure compliance with the Guidance; implemented a consumer complaint process to resolve consumer complaints involving loans covered by the Guidance; and educated employees and agents to help them understand how to apply the best practices. In addition, the licensee shall indicate the number of any consumer complaints it received during the reporting period regarding loans that are subject to the Guidance, including the number of resolved complaints and unresolved complaints and the number of workout arrangements used for resolved complaints. For purposes of this section, "workout arrangement" shall mean a modified or converted loan product with predictable payment requirements to help the financially-stressed borrower. If any nontraditional mortgage loans or adjustable rate mortgage loans subject to the Guidance were made or arranged, the licensee shall also submit information regarding those loan products on the form entitled Non-traditional,

Adjustable Rate and Mortgage Loan Survey (Rev. 8/07), which is hereby incorporated by reference. This form is available on the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov).

(c) Books and Records. If the licensee receives any reportable consumer complaints described in subsection (b), the licensee shall maintain for each complaint a copy of the complaint and the licensee's written response or explanation of how the company resolved the complaint including any workout arrangement, shall maintain this documentation as part of its books and records, and shall make the documentation available to the commissioner upon request. In addition, if the licensee reports any internal controls or procedures or nontraditional or adjustable rate loans described in subsection (b), the licensee shall maintain documentation of those controls or procedures as part of its books and records, and any loan documentation required by law, and shall make the documentation available to the commissioner upon request.

(d) Loan Disclosures. Every licensee shall, within three business days after receipt of a completed application for a nontraditional loan or an adjustable rate loan that is subject to the Guidance, or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower statements in writing disclosing, in a clear and conspicuous manner, information comparing payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products offered by the finance company and that are subject to the Guidance. This information shall be provided by one of the following methods:

(1) The form entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction (8/1/07), which is hereby incorporated by reference. This form and its instructions are available on the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov); or

(2) The form of the typical mortgage transaction disclosures set forth in the Comparison of Single Mortgage Features of the Form RE 885 of the Department of

Real Estate, as required by Title 10, California Code of Regulations, Section 2842, when provided by a real estate broker on behalf of the finance company. This form is available on the Department of Real Estate website at [www.dre.ca.gov](http://www.dre.ca.gov); or

(3) Any other form used by the licensee to compare payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products that are subject to the Guidance; provided, however, that the form shall, at a minimum, (A) compare monthly payments and loan balances of these loan products offered by the licensee, and (B) reflect the borrower's proposed loan amount.

(e) Advertising Prohibitions. For purposes of Section 50204 of the Financial Code, the following are considered false, misleading, or deceptive advertising prohibited by that section for loans that are subject to the Guidance:

(1) Any advertisement of an installment in repayment of an adjustable rate, interest only or payment-option loan without an equally prominent disclosure of the following information about the loan as applicable:

- (A) Principal amount
- (B) Term of loan
- (C) Initial interest rate
- (D) Number of months the initial interest rate will be in effect
- (E) Fully-indexed interest rate
- (F) Maximum interest rate
- (G) If different, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate
- (H) Annual percentage rate
- (I) How often the interest rate and payments can change
- (J) Maximum periodic change in the interest rate and payments (periodic caps)

(K) Number of months and percentage of original loan amount after which minimum payments will not be accepted and the loan re-amortizes

(L) The monthly payment based on the maximum interest rate, and the loan balance after all negative amortization is included, assuming minimum payments are made

(M) If the loan contains a prepayment penalty, a statement to that effect

(N) If the loan contains a balloon payment, a statement to that effect

(2) Any advertisement that the licensee can arrange "low doc/no doc", "no income/no asset", "stated income", "stated asset", "no ratio" or similar loan products without a statement that these products may have a higher interest rate, more points or more fees than other products requiring documentation.

(f) This section applies to loans secured by residential real property located in this State improved by a one-to-four family dwelling.

Note: Authority cited: Section 50304, Financial Code. Reference: Sections 50003, 50124, 50204, 50302, 50304, 50307, 50308, 50314, 50322, and 50333, Financial Code.

55. Section 1950.316 is amended to read:

§ 1950.316. Report of Civil, Criminal or Disciplinary Action.

A residential mortgage lender, residential mortgage lender and servicer, ~~or residential mortgage loan-servicer,~~ or mortgage loan originator shall immediately report ~~in writing~~ to the Commissioner any civil, criminal or disciplinary action set forth in Section 50316 or 50317 of the Code, filed against the residential mortgage lender, ~~or residential mortgage loan-servicer,~~ residential mortgage lender and servicer, mortgage loan originator, or any of its officers, directors, partners, shareholders controlling 10

percent or more of the ownership interests, trustees or employees (as "employee" is defined in subdivision (h) of Section 50317 of the Code) through the NMLS in accordance with its procedures for transmission to the Commissioner on Forms MU1, MU2, MU3, or MU4. Any action that cannot be reported through NMLS shall be reported directly to the Commissioner.

(b) If a residential mortgage lender, mortgage servicer, or residential mortgage lender and servicer finds that its mortgage loan originator has not filed an amendment to his or her Form MU4, the residential mortgage lender, residential mortgage loan servicer, or residential mortgage lender and mortgage servicer shall proceed as required in Section 1950.122.5 of these rules.

(c) The changes to this section made by emergency regulation in April, 2010 shall become operative on July 31, 2010.

Note: Authority cited: Sections 50146 and 50304, Financial Code. Reference: Sections 50140, 50146, 50316 and 50317, Financial Code.

56. Section 1950.317 is amended to read:

§ 1950.317. Report of Defalcation.

A residential mortgage lender, residential mortgage lender and servicer, ~~or residential mortgage loan-servicer, or mortgage loan originator~~ shall immediately report to the Commissioner any defalcation, embezzlement or theft made, or reasonably believed by the company to have been made, by any of its officers, directors, partners, shareholders controlling 10 percent or more of the ownership interests, trustees or employees (as "employee" is defined in subdivision (h) of Section 50317 of the Code).

Note: Authority cited: Section 50304, Financial Code. Reference: Section 50317, Financial Code.

## TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS FINDING OF EMERGENCY

Pursuant to Government Code Section 11346.1, the California Corporations Commissioner ("Commissioner") hereby adopts Sections 1409.1, 1414, 1422.4, 1422.4.1, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, 1422.7, 1422.7.1, 1422.9, 1422.10, 1422.11, 1422.12, 1424, and 1437; and amends Sections 1404, 1409, 1411, 1430.5, 1431, 1433, 1436, 1454, 1550, 1552, and 1557 of Title 10 of the California Code of Regulations under California Finance Lenders Law; adopts Sections 1950.122.2.1, 1950.122.4, 1950.122.4.1, 1950.122.5, 1950.122.5.1, 1950.122.5.2, 1950.122.5.3, 1950.122.5.4, 1950.122.6, 1950.122.7, 1950.122.8, 1950.122.9, 1950.122.10, 1950.122.11, 1950.122.12, 1950.205.1, 1950.209, and 1950.307; and amends 1950.003, 1950.122, 1950.122.2, 1950.123, 1950.204.3, 1950.204.4, 1950.301, 1950.314.8, 1950.316, and 1950.317 of Title 10 of the California Code of Regulations under the California Residential Mortgage Lending Act (10 C.C.R. Sections 1404, 1409, 1409.1, 1411, 1414, 1422.4, 1422.4.1, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, 1422.7, 1422.7.1, 1422.9, 1422.10, 1422.11, 1422.12, 1424, 1430.5, 1431, 1433, 1436, 1437, 1454, 1550, 1552, 1557, 1950.003, 1950.122, 1950.122.2, 1950.122.2.1, 1950.122.4, 1950.122.4.1, 1950.122.5, 1950.122.5.1, 1950.122.5.2, 1950.122.5.3, 1950.122.5.4, 1950.122.6, 1950.122.7, 1950.122.8, 1950.122.9, 1950.122.10, 1950.122.11, 1950.122.12, 1950.123, 1950.204.3, 1950.204.4, 1950.205.1, 1950.209, 1950.301, 1950.307, 1950.314.8, 1950.316, and 1950.317).

As a result of a recent federal law, the Secure and Fair Enforcement of Mortgage Licensing Act of 2008, or "SAFE Act" (contained in the federal Housing and Economic Recovery Act of 2008, HR 3221 (Public Law 110-289) enacted on July 30, 2008), and based on California's law (SB 36 – Chap.160, Stats. 2009 – Calderon, signed into law on October 11, 2009 as an urgency measure), which implements the SAFE Act, the Department of Corporations ("Department") is now responsible for the licensing and regulation of certain mortgage loan originators employed by residential mortgage providers that are licensed by the Department. Under SB 36, mortgage loan originators are required to be licensed by the Department no later than July 31, 2010.

Under the recently enacted federal and state laws, mortgage loan originators are required to file license applications through the Nationwide Mortgage Licensing System and Registry ("NMLS"), a national licensing and registry depository for residential mortgage providers and mortgage loan originators. On January 4, 2010, the NMLS became operational in California and began accepting applications from applicants subject to the Department's jurisdiction. These emergency regulations set forth the application requirements and procedures necessary for mortgage loan originator license applicants and their residential mortgage provider employers to comply with the SAFE Act and SB 36.

The Department has determined that an emergency exists that requires an emergency rulemaking action to avoid serious harm to the public peace, health and safety, or general welfare. In particular, the licensing procedures for mortgage loan originator applications are immediately needed to provide guidance to individual mortgage loan originators and their employer residential mortgage providers on the use of the uniform

license applications filed through NMLS, the fees necessary for licensure, and the procedural aspects of submitting various types of information through either NMLS or directly with the Commissioner.

These emergency regulations pertain only to the residential mortgage lending laws administered by the Department, namely, the California Finance Lenders Law ("CFLL") and the California Residential Mortgage Lending Act ("CRMLA").

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### I. Summary

The Department licenses and regulates finance lenders and brokers under the CFLL, and residential mortgage lenders and servicers under the CRMLA. Both of these laws regulate licensees engaged in the business of residential mortgage lending.

On October 11, 2009, the Governor signed into law SB 36 (Chap.160, Stats. 2009 – Calderon) as an urgency measure. SB 36 implements the recent federal law that requires all states, including California, license all individual mortgage loan originators who offer or negotiate residential mortgages. This emergency rulemaking action enacts regulations to implement SB 36 and the SAFE Act.

#### A. The SAFE Act

The SAFE Act was enacted by Congress in response to the housing and foreclosure meltdown. Many believe that one of the many factors of the meltdown was overzealous lending activities. The SAFE Act is intended to provide additional consumer protections with respect to loan originating activities, while promoting a more immediate and comprehensive recovery to the nation's housing market. To that end, the SAFE Act prohibits individuals from engaging in business as a mortgage loan originator unless the individuals are licensed or registered by a state regulatory agency, a federal banking regulatory agency, or the Department of Housing and Urban Development (HUD) (under certain conditions<sup>1</sup>).

The SAFE Act is applicable to mortgage loan originators who offer or negotiate residential mortgages, and requires states to implement a system for licensing and registering individual mortgage loan originators. The SAFE Act also requires states to participate in a national licensing system and registry, the NMLS. The NMLS is a national depository that centralizes information on individual mortgage loan originators, such as disciplinary history and licensure information, including testing, criminal background, and pre- and post- licensure education information. The NMLS is patterned after the Central Registration Depository or CRD, a national licensing depository for securities broker-dealers and their agents.

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<sup>1</sup> The SAFE Act provides that HUD will determine whether a state has laws in place for the licensing of mortgage loan originators that meet the minimum requirements of the SAFE Act, and if no such laws are in place, HUD will establish such a system. HUD published its proposed regulations in the Federal Register on December 15, 2009 (74 FR 66548).

The SAFE Act requires states to utilize the NMLS, and the electronic licensing system and registry will allow state and federal residential mortgage regulators to track the activities of mortgage loan originators. This will be accomplished by the assignment of a unique identifier number. Each mortgage loan originator is issued a unique identifier through the NMLS so that his or her licensing and disciplinary record will be available to regulators and the public. The unique identifier number will remain associated with the individual as he or she moves from firm to firm or state to state. Consequently, states and the public will have increased access to information regarding mortgage loan activities, and have better regulatory and supervisory oversight of the actions of mortgage loan originators and their employers.

## B. SB 36

SB 36 implements the SAFE Act in California, and requires that all mortgage loan originators subject to regulation by the Department become licensed by the Department through the NMLS, by July 31, 2010. SB 36 enables California to regulate mortgage loan originators.

The CFLL and the CRMLA authorize the making, brokering, and servicing of residential mortgage loans by licensees, but prior to SB 36 these laws did not require the licensure of the employees of the licensees (the individual mortgage loan originators). SB 36 implements the SAFE Act by amending both lending laws administered by the Department to provide for the licensure of the individual mortgage loan originators. SB 36 also provides authority to require that current mortgage lender, broker, and servicer licensees (subsequently referred to as residential mortgage providers) transition and begin using the NMLS for licensure and other filings with the Department.

In general, this rulemaking is necessary to implement the state and federal requirements of the SAFE Act for the licensure of mortgage loan originators and to require the use of NMLS in the licensing and oversight of residential mortgage providers. Also, the rulemaking is necessary to clarify the requirements imposed by the SAFE Act on mortgage loan providers subject to the CFLL and the CRMLA. Specifically, the rulemaking would:

- Promote consistent regulation in the mortgage market;
- Provide guidance on the use of uniform license applications and reporting requirements for a state licensed residential mortgage provider, including a mortgage loan originator;
- Provide guidance on the use of NMLS, the comprehensive licensing and supervisory database, to the extent that NMLS is a channeling and communication tool with the Department;
- Provide guidelines for increased accountability and tracking of mortgage loan originators;
- Streamline the licensing process and reduce regulatory burdens;

- Enhance consumer protections and support anti-fraud measures;
- Clarify the responsibilities of residential mortgage providers and mortgage loan originators, in order to facilitate responsible behavior in the subprime mortgage market place;
- Confirm education and examination requirements related to residential mortgage lending, and in particular subprime mortgage products;
- Clarify and make specific the manner in which licensees will be required to follow the SAFE Act requirements for the employment and licensure of mortgage loan originators, including bonding, pre- and post-licensure education, testing, criminal and credit history background, continuing education, and disqualification provisions;
- Clarify that a residential mortgage provider applicant and licensee, and a mortgage loan originator, are required to use the NMLS for licensing, amendment, and mortgage loan originator license renewal purposes;
- Require mortgage loan originators be in compliance with all SAFE Act minimum requirements for license renewals by December 31<sup>st</sup> of every year ;
- Confirm that a residential mortgage provider who employs one or more mortgage loan originators must meet a minimum net worth requirement of \$250,000;
- Clarify the books and records, reporting, and examination requirements of residential mortgage providers and mortgage loan originators;
- Clarify advertising requirements and prohibitions with respect to residential mortgage providers and mortgage loan originators;
- Specify the responsibilities of residential mortgage providers over their mortgage loan originator employees; and
- Identify and set forth the responsibilities of residential mortgage originators.

The CFLL also regulates finance lenders who do not make or broker residential mortgage loans. Finance lenders who do not take residential real estate property as security for a loan, will continue to file their license applications directly with the Department, on the existing application form. These proposed regulations seek to differentiate the responsibilities of finance lenders not making or brokering residential mortgage loans, and those of the residential mortgage provider. In addition, this rulemaking action makes several general technical, editing, and formatting changes throughout the current regulations to make consistent the requirements for licensure of finance lender applicants and residential mortgage provider applicants, to the extent consistent with the law.

### C. The License Application Process and NMLS

This regulatory action proposes to amend the application process for both individuals and companies making or brokering residential mortgage loans by requiring consistent information from an applicant on uniform forms filed through the NMLS or directly with the Commissioner.

#### Sections 1422.4 and 1950.122 – Electronic Filings

Under existing law, all finance lenders under the CFLL and all residential mortgage providers under the CRMLA are required to submit their license applications directly with the Department. Sections 1422.4 and 1950.122 provide that all residential mortgage provider applications, including mortgage loan originator applications, are required to be filed electronically through the NMLS. These rules clarify that the electronic filing with NMLS is mandatory. The rules are necessary to ensure that all residential mortgage provider applications, amendments, reports, notices, fees, and related filings required to be filed with the Commissioner are filed electronically through the NMLS, to the extent the NMLS is capable of accepting the filings, and to ensure that all of the Department's residential mortgage provider licensees are registered on NMLS, and thus available to the public through the NMLS Consumer Access searchable website.

With respect to CFLL finance lenders, non-residential mortgage loan providers will continue to file their license applications directly with the Department.

#### Sections 1422.4.1 and 1950.122.12 Share Arrangements

The SAFE Act and SB 36 provide that state and federal mortgage industry oversight regulatory officials may share information collected and channeled through the NMLS. The Department proposes to specify the various state and federal mortgage industry oversight agencies to include, but not be limited to, the California Attorney General, the U.S. Department of Justice, the Federal Bureau of Investigation (FBI), state and federal regulatory agencies, and county district attorney's offices. The Department's proposal is necessary to clarify the different regulatory agencies that the Department may communicate and share information with, such as enforcement actions and investigations related to lenders, brokers, servicers and mortgage loan originators.

The Department also proposes to specify procedures for a residential mortgage provider and mortgage loan originator to seek confidential treatment of certain documents or parts of the documents relative to the application or filings through the NMLS in accordance with Government Code Section 6254(d). The procedure can be found in Chapter 3, Title 10 of the California Code of Regulations Section 250.10.

#### Sections 1422.5 and 1950.122.4 – Application Process for Residential Mortgage Lenders, Brokers and Servicers

Currently, paper applications for licensure are filed directly with the Commissioner. As required by SB 36 and the SAFE Act, the Department proposes to require the filing of

residential mortgage provider applications through the NMLS. Generally, these sections specify that the procedures are applicable to residential mortgage lenders, mortgage brokers, and mortgage servicers required to be licensed pursuant to Section 22100 of the CFL and Section 50002 of the CRMLA. The proposed regulation makes changes only with respect to residential mortgage providers, and finance lenders not engaged in residential mortgage lending will continue to file applications directly with the Commissioner. Every residential mortgage provider is required to transition onto NMLS by July 31, 2010 to continue to make, broker or service residential mortgage loans on or after this date, and no hardship exemption is provided in the rules.

Subsection (a) of the proposed rules sets forth the requirements for the application and specify what information must be provided in NMLS. The rules provide that applicants are to provide the information requested on the NMLS uniform forms, Forms MU1, MU2 and MU3. Form MU1 is the Uniform Mortgage Lender/Mortgage Broker Form, and this form is used by NMLS for the licensure of a company engaged in the lending, brokering, or servicing of residential mortgage loans. Form MU2 is the Uniform Mortgage Biographical Statement & Consent Form, and this form is used by NMLS for the reporting of background information on the direct and indirect control persons of a company. Form MU3 is the Uniform Mortgage Branch Office Form, and this form is used by NMLS for the reporting or licensure of branch offices of a company. The rules clarify items within the NMLS form that may be optional or dependent upon the requirements of the various jurisdictions, such as fictitious business names, website information, and financial statements, and further set forth licensure requirements unique to California. The rules provide instruction on whether the information may be submitted through NMLS or directly to the Department.

The proposed rules also specify the types of information that is required to be filed directly with the Commissioner, including the Department's Customer Authorization of Disclosure of Financial Records form, a detailed description of the applicant's business, evidence of a surety bond, fictitious business name documents, and other business organization documents.

Subsection (b) of the proposed regulations set forth the filing fee requirements for applicants. Some filing fees are statutory and include application fees (\$200 under the CFL; \$900 under the CRMLA), investigation fees (\$100), and fingerprint processing fees (\$20 per set, plus any fees required by the Department of Justice or the Federal Bureau of Investigation) related to fingerprint and background checks of the applicants. When applicable, these fees are required to be paid through the NMLS. The proposed rules also provide that some fees may be required to be paid directly with the Commissioner until such time as the NMLS can accept the fees. The proposed rules also specify that fees are not refundable.

Subsection (c) of the proposed regulations identifies when an application is complete. The proposed rules specify that an application is not considered complete until all required fees, all required submissions, and the background and investigative reports are received by the Commissioner. Moreover, the regulations provide that the application may be considered withdrawn if not all required submissions are received within 90 days of a written notification of deficiency.

Subsection (d) of the proposed regulations provides instruction for the filing of an amendment to the application or licensure record, and provides that an applicant or licensee must follow the procedures in Sections 1409.1 and 1950.122.9 of the rules to report changes to the Commissioner.

Subsection (e) of the proposed regulations sets forth the transition provisions for existing licensees to transition onto NMLS. The rules provide that the Commissioner will not approve the sponsorship of a mortgage loan originator until the Commissioner has approved the transition of the licensee's application onto NMLS. This proposed rule is necessary to provide direction to existing licensees that they must first transition onto NMLS for the mortgage loan originators employed by the licensees to become licensed in this state. The rules further provide that licensees must transition onto NMLS by July 31, 2010.

#### Sections 1422.6 and 1950.122.5 – Application Process for Mortgage Loan Originators

Sections 1422.6 and 1950.122.5 are proposed to be adopted to set forth application procedures for the licensure of mortgage loan originators with under the CFLL and the CRMLA, respectively.

Subsection (a) requires that a licensed residential mortgage provider sponsor in NMLS each mortgage loan originator employed by it. The proposed rules also provide that the residential mortgage provider proactively ascertain that the mortgage loan originator meets the qualification requirements of the rules regarding the licensure requirements generally, and the character, business reputation, and experience of the individual, specifically.

Subsection (b) specifies that upon employment of a mortgage loan originator, the residential mortgage provider ensure that a mortgage loan originator has filed Form MU4 (the Uniform Individual Mortgage License/Registration & Consent Form) in NMLS and obtained a license from the Commissioner.

Subsection (c) of the proposed regulations clarifies that a mortgage loan originator sponsorship is not approved until the Commissioner approves the sponsorship and issues the mortgage loan originator license. Furthermore, the proposed rules specify that a sponsorship will not be approved unless the residential mortgage provider has obtained a license through NMLS or transitioned its license onto NMLS.

Subsection (d) sets forth fee requirements for a mortgage loan originator license. The application fee is \$100 and the fee for the criminal history background check is \$20, and both fees are required to be paid through NMLS. The proposed rule also specifies that if a mortgage loan originator obtains a unique identifier from NMLS and designates California as his or her state of licensure on or before March 31, 2010, the application fee is waived. An applicant does not need to have completed his or her pre-license education requirements, the test requirement, or any other licensure requirement to qualify for the fee waiver, but must obtain a unique identifier and designate California as the state of licensure in NMLS. The proposed rule further clarifies that the fees

specified in the rules are in addition to any fees required by NMLS, any other regulatory agency, or any other entity which may require the payment of fees in relation to the license application (such as, for example, education or test providers).

Subsection (e) clarifies that the application may be considered withdrawn if not all required submissions are received by the Commissioner within 90 days of a written notification of deficiency.

Subsection (f) prohibits a residential mortgage provider from allowing a mortgage loan originator to engage in mortgage loan originator activities if the license or sponsorship has lapsed, unless reinstated.

Subsection (g) requires a residential mortgage provider to require the mortgage loan originators employed by the provider file an amendment to the Form MU4 within twenty (20) days of any change in information contained in the Form MU4.

Subsection (h) prohibits a mortgage loan originator from engaging in business under any name other than a name approved by the Commissioner for use by the residential mortgage provider employing the mortgage loan originator.

Subsection (i) provides that the residential mortgage provider is responsible for the acts and conduct of the mortgage loan originator until the sponsorship with the mortgage loan originator is terminated through the NMLS. The subsection further sets forth specific termination procedures and requires that the termination be reported by the residential mortgage provider within fifteen (15) days after the termination of the mortgage loan originator. In addition, the subsection requires the mortgage loan originator to file an amendment to Form MU4 in NMLS with fifteen (15) days of the termination, and prohibits a mortgage loan originator from originating loans if the mortgage loan originator does not have a sponsor.

Subsection (j) sets forth the procedures for a sole proprietor mortgage loan originator. A sole proprietor must obtain a license as a residential mortgage provider through the filing of Forms MU1 and MU2 with NMLS, and also must obtain a mortgage loan originator license by filing Form MU4 with NMLS.

These proposed regulations outlining the requirements for mortgage loan originator applications are necessary to promote consistent regulation in the residential mortgage market while clarifying the obligations of licensees.

#### Sections 1422.6.1 and 1950.122.5.1 – Qualifications of Mortgage Loan Originator Applicants

The Department proposes rules to clarify the minimum education and testing requirements for mortgage loan originators under the CFL and the CRMLA, respectively. The rules are necessary to implement SB 36 and the Federal SAFE Act. The rules provide that an applicant for a mortgage loan originator license must pass a test administered by the NMLS within a year of obtaining a license, and that the test will

consist of a national and state component. The rules further provide that applicants must complete 20 hours of instruction, including 3 hours on federal law, 3 hours on ethics, and 2 hours on nontraditional mortgage products.

#### Sections 1422.6.2 and 1950.122.5.2 – Evidence of Financial Responsibility

The Department proposes regulations to clarify the requirements that the Commissioner may consider when evaluating whether a mortgage loan originator applicant has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently. The rules provide that an applicant may be precluded from obtaining a mortgage loan originator license if his or her personal history includes any liens or judgments for fraud, misrepresentation, dishonest dealing or the mishandling of trust funds, or other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty.

#### Sections 1422.6.3 and 1950.122.5.3 – Continuing Education and Renewal Procedures for Mortgage Loan Originators

The SAFE Act requires that mortgage loan originator licenses be renewed on an annual basis. If the license is not renewed within the time prescribed, the license has lapsed or expired. The rules provide that a mortgage loan originator with a lapsed or expired license may not engage in any business as a mortgage loan originator. This regulation is necessary to inform mortgage loan originators that the license will expire unless steps are taken to renew or reinstate the license. The proposed regulations also clarify the continuing education requirements of a mortgage loan originator when renewing a license.

#### Sections 1422.7 and 1950.122.8 – Notices

Under current state and federal law, various written notices are required to be provided to the public when personal information is collected. The Department's proposed regulations incorporate the notices into the uniform applications that the residential mortgage provider, control persons, and mortgage loan originators file electronically through the NMLS. The notices are required pursuant to the Information Practices Act of 1977 (California Civil Code Section 1798.17), Section 17520 of the Family Code (child support), and Federal Privacy Act of 1974 (social security number).

The SAFE Act requires that the NMLS collect social security numbers and other personal information from applicants. These rules are necessary to inform the applicants of the potential uses for the personal information provided to NMLS.

#### Sections 1422.7.1 and 1950.122.7 – Statement of Citizenship, Alienage, and Immigration Status

Under current state and federal law, only specified aliens are eligible to receive a license or certificate. (See Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. No. 104-193), 8 U.S.C. Section 1621 et seq.) Current regulations specify that an individual finance lender and broker, and

residential mortgage lender and servicer license applicant is required to submit a Statement of Citizenship, Alienage, and Immigration Status form. The rules extend the requirement to include an individual mortgage loan originator applicant, to comply with current state and federal law.

#### Sections 1422.9 and 1950.122.10 – Expiration of Licenses

Existing law provides for residential mortgage provider licenses that are perpetual in nature, provided that a licensee complies with the requirements of the license. The residential mortgage provider licenses do not have an expiration date. However, SB 36 and the SAFE Act require mortgage loan originator licenses to be renewed on an annual basis. The Department proposes regulations that clarify that a residential mortgage provider license continues in effect until revoked or suspended by the Commissioner or surrendered by the licensee, subject to surrender procedures under the rules. The rule further provides that mortgage loan originator licenses must be renewed on an annual basis.

#### Sections 1422.10 and 1950.123 – Surrender of license

Current law provides that a licensee may surrender its license, but the surrender is not effective until approved by the Commissioner. The Department proposes a regulation under the CFLL and an amendment under the CRMLA to clarify that an application to surrender a license as a residential mortgage provider shall be filed with the Department on the applicable Forms MU1, MU2, MU3, and MU4 through NMLS.

#### Sections 1422.11 and 1950.122.5.4 – Reinstatement

The proposed rules specify that if a mortgage loan originator license is not renewed by December 31<sup>st</sup>, the license is considered lapsed and the licensee is not authorized to do business as a mortgage loan originator unless the license is reinstated. The Department's proposed rules further clarify how a mortgage loan originator license may be reinstated. In particular, the licensee must submit the request for reinstatement through NMLS after December 31<sup>st</sup> and before March 1<sup>st</sup>. Furthermore, all minimum requirements for license renewal, including education requirements and the payment of fees, are required.

The regulations also clarify that if the mortgage loan originator license has expired and reinstatement has not taken place, the mortgage loan originator is required to apply for a new license. These regulations are necessary to clarify the reinstatement requirements of lapsed mortgage loan originator licenses, and are consistent with the functionality of NMLS.

#### Sections 1422.12 and 1950.122.11 Challenge Process

The SAFE Act and SB 36 require that state licensing authorities provide applicants and licensees the ability to challenge the accurateness of information that is entered into and maintained by NMLS. The Department proposes to add Sections 1422.12 and 1950.122.11 to comply with this requirement. The Department's proposed challenge process is patterned after California Penal Code Section 11126 administered by the

Attorney General's Bureau of Criminal Identification and Information regarding criminal background check information. The rules outline the process for a licensee to challenge the information, and require the Commissioner to review the challenge and issue a finding.

The SAFE Act also requires that the challenge process comport with due process requirements. Consequently, the Department's proposed rules provide that the licensee or applicant may, subject to the procedure specified, seek judicial review of the Commissioner's finding pursuant to the Administrative Procedure Act, Section 11523 of the Government Code.

#### D. Changes Common to Both CFLL and CRMLA Regulations

##### Sections 1404 and 1950.003

Sections 1404 and 1950.003 further clarify and define some terms used in the regulations, such as "NMLS," "MU1," "MU2," "MU3," "MU4," and "to sponsor." With respect to the CFLL, where licensees can make or broker many types of loans beyond residential mortgage loans, the term "mortgage lender, mortgage broker, or mortgage lender and broker" is defined as those finance lenders who make, broker, or service residential mortgage loans and who are required to be licensed under the CFLL. The definition is necessary in order to define the lenders and brokers required to participate in NMLS.

##### Sections 1409 and 1950.122.2.1

Under current Section 1409 of the rules, a finance lender is required to file a list of officers, directors, and other control persons with the Department and to report any change with respect to the information within thirty days from the date of the change. Section 1409 is proposed to be amended to provide that a mortgage lender, broker, and mortgage lender and broker must maintain a record of its officers, directors, and other control persons through the NMLS, and to file any amendments to the change in information regarding those control persons through the NMLS within 30 days of the change. The Department further proposes to add a rule for CRMLA licensees requiring the residential mortgage provider to file a similar list of officers, directors, and other control persons to the Commissioner through NMLS, and to file amendments upon changes to the information.

##### Sections 1409.1 and 1950.122.9 – Notice of changes

Current regulations require licensees to provide the Commissioner a notice of change in the information contained in an application for licensure. Proposed Sections 1409.1 and 1950.122.9 require residential mortgage providers and mortgage loan originators to make any changes in the information contained in the application promptly. Amendments are required to be filed through NMLS or, if changes cannot be submitted through NMLS, directly with the Commissioner. The change in information extends to the employment of new mortgage loan originator employees in California, and any termination of employment of mortgage loan originator employees.

With respect to mortgage loan originators, the proposed rules clarify that a mortgage loan originator must make the required changes in NMLS within twenty (20) days of the changes to the information, and may not renew his or her license unless the Form MU4 has been amended. Furthermore, the proposed rules require that upon discovery that an employee mortgage loan originator has not filed an amendment to his or her Form MU4, a residential mortgage provider must make a demand upon the mortgage loan originator to make the change. If the change is not made within five (5) days from the date of the demand, the residential mortgage provider is required to inform the Commissioner, in writing.

These new regulations are necessary to require applicants and licensees to keep their NMLS record current and up-to-date, since the NMLS is a real-time system where the information may be viewed and acted upon by multiple regulatory jurisdictions at the same time. Moreover, these rules are necessary to inform and clarify to residential mortgage providers that each licensee has an obligation to inform the Commissioner of any change in information.

#### Sections 1411 and 1950.316

Existing Section 1411 requires that a finance lender report to the Commissioner any criminal action filed against it or its directors, officers, or management. Section 1411 is amended to require that a mortgage lender, broker, and mortgage lender and broker report changes in criminal, regulatory, and civil action and other information contained in the application, through the NMLS on Forms MU1, MU2, MU3, and MU4, as applicable. Current Section 1950.316 requires a residential mortgage provider to report any civil, criminal, or disciplinary action against the mortgage provider or any of its controlling persons, including specified employees. The proposed amendments extend the reporting requirement to mortgage loan originators with regard to civil, criminal or disciplinary action. These civil, criminal, or disciplinary actions are proposed to be reported by amendment to the applicable uniform form through the NMLS.

These changes are necessary to conform to the requirements of the SAFE Act, and in particular, to place the reporting requirement on each regulated residential mortgage provider to make the necessary amendment to the respective uniform form.

#### Sections 1414 and 1950.122.6 – Supervision of Mortgage Loan Originators

Under both SB 36 and the SAFE Act, residential mortgage providers are required to supervise their sponsored mortgage loan originators. The Department's proposed rules specify that mortgage providers are required to supervise their mortgage loan originators, and to establish and enforce written procedures. The rules provide that every mortgage loan originator must be subject to the supervision of a branch manager, who is indicated as such on the Form MU3, and files a Form MU2. The rules further provide that a provider must designate a Supervisor, an individual, to supervise the activities of the branch managers, and to periodically inspect each business office to ensure that the written procedures are enforced. Furthermore, if there are no branches, the rules provide that a supervisor would be directly supervise and review the activities of the mortgage loan originator.

The rules provide the residential mortgage provider flexibility in determining its internal procedures with regard to the supervision of its mortgage loan originators, but ensure that providers have and implement such procedures. The rules also require a licensee to maintain the written procedures at each business office, and that the written procedures are maintained as part of the books and records of the licensees.

#### Sections 1424 and 1950.122.4.1 Branch Office Instructions

Current law and regulations provide specific requirements for finance lenders that seek to do business at additional, or branch locations (See Section 1423 of these rules). The proposed rules clarify the procedures for the submission of a branch application for a residential mortgage provider. Specifically, the proposed regulations require that the Form MU3 (Uniform Mortgage Branch Office Form) be filed through NMLS for each location, and Form MU2 (Biographical Statement & Consent Uniform Mortgage Lender/Mortgage Broker Form) be filed by the branch manager of the location and that each location must have a separate branch manager. The regulations continue to require that every branch office of a CFLL licensee be separately licensed, as required by statute.

#### Sections 1430.5 and 1950.307

Existing law provides that residential mortgage providers are required to file an annual report with the Commissioner, and SB 36 provides the Commissioner with authority to require residential mortgage providers to submit to NMLS reports of condition. The proposed amendments clarify that residential mortgage providers must file the call report through the NMLS for transmission to the Commissioner.

Furthermore, the proposed regulations require that a mortgage loan originator ensure that all residential mortgage loans that close pursuant to his or her loan origination activities be included in the call report of his or her employer. This requirement mirrors the draft regulations published by HUD which require that “[t]he supervisory authority must require a loan originator to ensure that all residential mortgage loans that close are included in reports of condition submitted to the NMLSR.” (See Section 3400.111(f), Federal Register, Vol. 74, No. 239, p. 66559.)

#### Sections 1433 and 1950.209

Current rules under the CFLL provide specific requirements for forms, such as minimum font size. Moreover, Section 1433 of the rules provides that a finance lender may not use a loan form that the Commissioner objects to. The SAFE Act requires that any form used by a residential mortgage provider, including advertisements, or in certain circumstances, used by a mortgage loan originator, to include the unique identifier number of the entity or individual.

The proposed changes to Section 1433 and the adoption of Section 1950.209 conform to the SAFE Act and SB 36 by providing that mortgage loan originators and residential mortgage providers must include unique identifier numbers on all forms used by the residential mortgage provider and mortgage loan originator. The proposed rules require the number be labeled, and no smaller than 8-point bold font.

### Sections 1436 and 1950.314.8

Existing rules set forth requirements for licensees related to nontraditional and adjustable rate mortgage products. Existing Sections 1436 and 1950.314.8 require licensees to: (1) implement best practices, as defined, on a continuous basis; (2) report annually to the Department on whether they have made or arranged nontraditional and adjustable rate mortgage products, whether they have implemented risk-management best practices, whether they have put into place internal controls or procedures, as specified, and the number of any consumer complaints; (3) maintain specified documentation as part of their books and records; (4) provide clear disclosures for nontraditional and adjustable rate loans, as specified; and (5) prohibit certain false, misleading, and deceptive advertising.

Both rules are amended to (1) require that all mortgage loan originators follow the best practices developed by his or her employer, (2) make technical and grammatical changes, and (3) extend the books and records requirements contained in current regulation regarding annual financial reports, to also apply to reports of condition (call reports).

With respect to Section 1436, since non-residential finance lenders are not subject to the requirements of the Guidance, the Department proposes to delete references to “finance lender” and insert “mortgage lender, broker, and mortgage lender and broker.” The proposed amendments are necessary to clarify that the Guidance is applicable only to residential mortgage loan providers. Moreover, the changes are needed for continued application of the rule on residential mortgage providers.

### Sections 1437 and 1950.205.1 Surety Bond

The SAFE Act requires that states establish minimum net worth or surety bond requirements based on the total aggregate value of residential mortgage loans originated by the company, or the establishment of a recovery fund option.

#### Section 1437 - CFLL

The CFLL requires that a finance lender maintain a \$25,000 surety bond, as a condition to licensure. SB 36 provides that the Commissioner may establish higher amounts by regulation. The purpose of the surety bond is for the recovery of expenses, fines, and fees levied by Commissioner or for losses or damages incurred by borrowers or consumers as the result of a licensee’s noncompliance with the law. The law provides that the Commissioner may require a higher bond amount or a new bond if an action is commenced. Based on an evaluation of total aggregate residential loan values reported by current licensees for purposes of the 2008 annual report (loan values for 2007), the Department proposes four graduated surety bond levels: \$25,000 for aggregate loans of \$1,000,000 or less; \$50,000 for aggregate loans of \$1,000,001 to \$50,000,000; \$100,000 for aggregate loans of \$50,000,001 to \$500,000,000; and \$200,000 for aggregate loans greater than \$500,000,001.

### Section 1950.205.1 - CRMLA

The CRMLA also requires that mortgage providers subject to the CRMLA maintain a minimum \$50,000 surety bond. SB 36 allows the Commissioner to prescribe higher surety bond requirements based on the aggregate mortgage loan amounts originated by mortgage loan originators of the mortgage provider. The Department proposes to require bond amounts which are similar to bond amounts proposed for residential mortgage providers under the CFLL. Therefore, the surety bond amounts required would be \$50,000 for aggregate loans equal to or less than \$50,000,000; \$100,000 for loans between \$50,000,001 to \$500,000,000; and \$200,000 for loans greater than \$500,000,001.

Both rules provide that a residential mortgage provider applicant with no operating history must make a good faith estimate of the loans anticipated to be originated in the upcoming year to determine the bond amount.

### Sections 1557 and 1950.204.4

Under current rules, “blind” advertising is prohibited. “Blind” advertising is defined as advertising that gives insufficient contact information or misleading information. Both Sections 1557 and 1950.204.4 are amended to prohibit all mortgage loan originators from using such potentially false, misleading, and deceptive advertising. The provisions also clarify and make specific the types of representations that constitute prohibited advertising, so licensees can understand and guard against them as they implement the SAFE Act requirements on an ongoing basis.

### E. Amendments Specific to CFLL Regulations

#### Section 1431

Current regulation provides that if the Commissioner requires a special report from a CFLL licensee, that report is to be signed by an authorized officer of the corporation, among others. Current licensees are made up of many different kinds of business entities, not just corporations. Section 1431 is proposed to be amended to clarify that the special report shall be signed by an authorized officer of a corporation or other business entity.

#### Section 1454

Current regulation prescribes the form and content of loan documents to be used in finance lender transactions. The Department proposes to amend the current rule to provide that any statement of loan form used by a mortgage lender, broker, mortgage lender and broker, or mortgage loan originator must include the unique identifier number and adhere to Rule 1433. This clarification is necessary to comport to the SAFE Act requirement that a mortgage loan originator's unique identifier number be placed on forms and other documents.

## Section 1550

Current regulation requires that a finance company provide advertisements to the Commissioner for review. A finance lender may use an advertisement only after having been notified in writing that the advertisement has not been disapproved. The proposed amendments to the rule extend the requirements to mortgage loan originators.

The Department also proposes to allow a mortgage loan originator the use of advertisement supplied by his or her employer mortgage lender, broker, or mortgage lender and broker, where the advertisement has previously been submitted to the Commissioner for review and a non-disapproval notification was received by the employer. This rule enables mortgage loan originators to use advertising that the Department has previously reviewed without having to resubmit the advertisement to the Department. The Department also proposes to clarify that any advertisement used by a licensed mortgage lender, broker, mortgage lender and broker, or mortgage loan originator is required to indicate the unique identifier number of the licensee. This requirement conforms the rules to the requirements of the SAFE Act.

## Section 1552

Current regulation requires a finance lender to maintain all advertising copy for at least ninety days after the last date of its use. The Department proposes to extend the requirement to require a mortgage lender, broker, mortgage lender and broker to retain the advertising of its sponsored mortgage loan originators.

### F. Amendments Specific to the CRMLA

#### Section 1950.122

Under current Section 1950.122, the application for licensure as a residential mortgage provider is required to be filed with the Commissioner in paper form. The Department proposes to delete the paper application in its entirety and require all applications to be filed electronically through NMLS.

#### Section 1950.122.2

Under current Section 1950.122.2 of the rules for the CRMLA, a mortgage loan provider is required to file a specified notice with the Commissioner with information regarding officers, directors, partners, and other control persons. This notice must be filed with the fingerprint application and fees for purposes of a background check of such control persons by the California Department of Justice pursuant to Section 50317 of the Financial Code.

NMLS does not currently provide the capability to process fingerprint information of officers, directors, and other control persons for purposes of criminal history background checks. Therefore, it is necessary to specify that such control persons of mortgage loan providers must continue to submit the notice and application directly to the Department.

### Section 1950.204.3

Current regulation prohibits a residential mortgage provider from specified types of advertising and requires that all providers refer to their license in any written, printed, or communicated advertisements. The Department proposes to extend the prohibition from specified types of advertising and requirement that all providers include license information to all mortgage loan originators. These amendments will ensure that any advertising by a mortgage loan originator identifies the mortgage loan originator's license information.

### Section 1950.301

Current regulation provides that if an employee of a licensee who is prohibited from employment causes the loss of trust funds, the Commissioner may request a Statement of Identity and Questionnaire, a Notice of Officers, Directors, and Control Persons in accordance with Section 1950.122.2, and fingerprints from all other employees of the licensee in order to determine whether other prohibited individuals are employed by the licensee. The Department proposes to amend the rule to provide that the Commissioner may request a Form MU2 in lieu of a Statement of Identity Questionnaire.

### Section 1950.317

Current regulation requires a residential mortgage provider to report any defalcation, embezzlement, or theft. The Department proposes amending the rule to extend the requirement for reporting to include mortgage loan originators. This rule is necessary to encompass the broad spectrum of mortgage providers that would have the duty to report any of the listed criminal activities, which will increase consumer protection.

### Timing

The Department is adopting or amending these rules through an emergency rulemaking action. All of the procedures for licensees to transition onto NMLS, and for applicants to submit applications through NMLS, must be enacted immediately to ensure that residential mortgage loans may continue to be made in this state on and after July 31, 2010. The changed and new regulatory requirements adopted as a consequence of SB 36 and the SAFE Act must be enacted immediately to ensure that residential mortgage providers and mortgage loan originators have adequate time to adjust operations to ensure compliance with the new requirements. However, some changes need not be operational until July 31, 2010, the date set forth in SB 36 as the date by which all mortgage loan originators must be licensed, and the date that HUD has provided for all states to be in compliance with the SAFE Act. Consequently, some changes to the rules expressly provide that the changes will be operational on July 31, 2010. The Department finds that these rules must nevertheless be adopted or amended through an emergency rulemaking action, to ensure residential mortgage providers have time to be in compliance with the rules when they become operational, to provide residential mortgage providers the entire framework of the new regulatory requirements, and to provide instruction on the new regulatory requirements, such as the supervisory

requirements, that impact the information required to be submitted in a licensee's transition onto NMLS.

### AUTHORITY

Sections 22012, 22100, 22101, 22105.1, 22105.2, 22105.3, 22107, 22108, 22109.1, 22150, 50002, 50120, 50124, 50140, 50146, and 50304, Financial Code; and Section 1344, Health and Safety Code.

### REFERENCE

Sections 1633.7, 1798.17, 1798.18, Civil Code; Section 17520, Family Code; Sections 22000 et seq., 22012, 22013, 22014, 22100, 22101, 22101.5, 22102, 22103, 22104, 22105, 22105.1, 22105.2, 22105.3, 22105.4, 22106, 22107, 22108, 22109, 22109.1, 22109.2, 22109.3, 22109.4, 22109.5, 22109.6, 22112, 22150, 22151, 22153, 22154, 22156, 22157, 22158, 22159, 22159(b), 22160, 22161, 22164, 22165, 22166, 22170, 22171, 22172, 22250, 22302, 22306, 22337, 22338, 22347, 22400, 22502, 22701, 22705, 22709, 22714, 22755, 50002, 50002.5, 50003, 50120, 50120(e), 50121, 50122, 50122(b)(7), 50123, 50124, 50126, 50126(b), 50128, 50130, 50130(b), 50140, 50141, 50142, 50143, 50144, 50145, 50146, 50150, 50151, 50201, 50204, 50205, 50301, 50301(g), 50302, 50304, 50307, 50307.2, 50308, 50314, 50316, 50317, 50322, and 50333, Financial Code; Sections 7470, 7473, 7490, and 13140 – 13144, Government Code; Section 1351, Health and Safety Code; Section 11077.1, Penal Code; 8 U.S.C. Sections 1621, 1641 and 1642; and Section 7 of Public Law 93-579 (5 U.S.C. Section 522a note).

### FINDING OF EMERGENCY

The California Corporations Commissioner hereby finds that these emergency regulations are necessary for the immediate preservation of the public peace, health and safety, or general welfare.

As a result of recent federal law, the Secure and Fair Enforcement of Mortgage Licensing Act of 2008, or "SAFE Act" (contained in the federal Housing and Economic Recovery Act of 2008, HR 3221 (Public Law 110-289) which was enacted on July 30, 2008), and recent California law (SB 36 – Chap.160, Stats. 2009 – Calderon, signed into law on October 11, 2009 as an urgency measure) that implements the SAFE Act, the Department is now required to license and regulate mortgage loan originators employed by its licensees under the CFLL and the CRMLA. Mortgage loan originators are required to be licensed by the Department no later than July 31, 2010 prior to engaging in any mortgage loan origination activities. On January 4, 2010, the NMLS began accepting applications from applicants subject to the Department's jurisdiction. These emergency regulations set forth the application and regulatory requirements and procedures necessary for mortgage loan originator license applicants and residential mortgage provider employers to comply with the recently enacted laws.

The Department has determined that there exists an emergency that requires this rulemaking be deemed an emergency rulemaking where immediate action to avoid

serious harm to the public peace, health and safety, or general welfare is required. In particular, regulations which set forth the licensing procedures for mortgage loan originator applications are immediately needed to provide guidance to individual mortgage loan originators and their employer residential mortgage providers on the use of the uniform license applications filed through NMLS, and reporting requirements for all state-licensed mortgage loan providers, including mortgage loan originators, subject to the jurisdiction of the Department.

If the procedures for the licensing of mortgage loan originators through the NMLS, and for transitioning residential mortgage providers onto the NMLS, are not immediately promulgated, there may be a significant lag in the licensing of mortgage loan originators. Residential mortgage providers subject to the Department's jurisdiction will not be able to originate any mortgage product unless offered by a licensed mortgage loan originator. Indeed, the SAFE Act prohibits individuals from engaging in business as a mortgage loan originator unless the individuals are licensed. The Department estimates that there are about 24,000 individuals to upwards of 40,000 individuals who will apply for the mortgage loan originator license under the CFLL and the CRMLA.<sup>2</sup> If these proposed rules are not immediately promulgated, there will be undue delays in the licensure of a large number of individuals and potential delays in an economic recovery.

Moreover, if licensure of mortgage loan originators cannot be effectuated in an orderly and timely manner, the fragile housing market in California may continue to suffer and any comprehensive recovery of the housing market may negatively be affected, and or potentially exasperated.

Nonemergency regulations could not have been undertaken since SB 36 was signed in October of 2009, and many of the details necessary to craft the rules have materialized in the past few months as the Department coordinated with NMLS in transitioning California onto the system. For example, NMLS procedures and functionality regarding credit reporting, fingerprint and background check reporting, and other pertinent and important procedural requirements have only been recently established by the NMLS. The Department has proceeded diligently to simultaneously coordinate with NMLS to implement the licensing protocol as of January 4, 2010, receive training on the NMLS system, and develop regulations.

Through this emergency rulemaking action, Department seeks to provide guidance to the residential mortgage lending community on how to comply with SB 36 and the SAFE Act. The rulemaking provides procedural guidance for mortgage loan originators and employer residential mortgage providers to begin the licensing process, which is estimated to take place over several months as mortgage loan originators fulfill the testing, education requirements of SB 36 and the SAFE Act.

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<sup>2</sup> During March and April of 2009, the Department surveyed all residential mortgage provider licensees in order to obtain an estimate of the number of mortgage loan originators that the Department would be responsible for licensing and regulating under the SAFE Act. Forty-nine percent of licensees answered the survey. Based on this response, the Department is able to estimate that there will be between 24,000 to 40,000 persons are under the Department's jurisdiction and required to be licensed under the new mortgage loan originator licensing requirement.

Consequently, the Commissioner is adopting these emergency regulations. This finding of emergency is supported by the case of Schenley Affiliated Brands Corp. v. Kirby, 21 Cal. App. 3d 177 (1971), where the court deferred to the agency's determination that an impending deadline constituted an emergency under the Administrative Procedure Act.

#### LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

#### COST OR SAVINGS

These regulations will not result in any cost or savings to any local agency or school district, nor any other nondiscretionary cost or savings on local agencies. These regulations will not result in any cost or savings in federal funding to the state. These regulations will not result in a fiscal impact on the Department beyond the fiscal impact incurred as a result of SB 36.

#### CONTACT PERSON

Inquiries concerning this action may be directed to Gayle Oshima, Senior Corporations Counsel, Office of Legislation and Policy, at (916) 322-3553. The backup contact person is Sherri Kaufman, Corporations Counsel at (916) 324-6965. Written inquiries may be submitted to the Department of Corporations, Office of Legislation and Policy, 1515 K Street, Suite 200, Sacramento, California, 95814.

Dated:            March 17, 2010  
                      Sacramento, California